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72 Civ 3423, [S.D.N.Y.] Rose Hurley vs Van Lare et al.

DATE	PROCEEDINGS
Aug. 11-72	Filed Complaint & issued summons.
Aug. 31-72	Filed Amended Complaint.
Sep. 12-72	Filed Pltff's Notice to take depositions & request to produce.
Jan. 18-73	Filed Pltffs affdvt & notice of motion for an order determining class action & for summary judgment. Ret: 1-31-73.
Jan. 18-73	Filed Pltffs memorandum of law in support.
Jan. 24-73	Filed Transcript of record of proceedings, dated 11-10-72 Deposition.
Feb. 8-73	Filed Intervene Pltffs affdvt & Notice of motion for a preliminary injunction & class action determination & a temporary restraining order. Ret: 3-9-73.
Feb. 8-73	Filed Intervene Pltffs memorandum of law in support.
Feb. 21-73	Filed Stip & Order that the pltffs motion for summary judgment are adjourned to 3-9-73. And that the defts will serve on pltffs counsel defts motion to dismiss or for summary judgment on or before 2-23-73. So Ordered 2-20-73. BAUMAN, J.
Mar. 6-73	Filed Defts affdvt & notice of motion for an order dismissing amended complaint. Ret: 3-9-73.
Mar. 6-73	Filed Defts Statement pursuant to General Rule 9(g) of the S.D.N.Y. in opposition to pltffs statement.
Mar. 6-73	Filed Defts memorandum of law.
Mar. 6-73	Filed Defts memorandum of law in opposition to proposed intervenors-pltffs motions to intervene & for temporary restraining order or preliminary injunction.

Relevant Docket Entries in Hurley v. *Van Lare.*

DATE	PROCEEDINGS
Apr. 2-73	Filed deft's memo of law. in opposition to proposed motion to Intervene
Oct. 4-73	Filed pltf. memo in opposition to motion to dismiss.
Oct. 4-73	Filed deft. supporting affdvt. in support of motion to dismiss.
Oct. 4-73	Filed notice of motion to intervene and for preliminary injunction by Loretta Clark.
Oct. 4-73	Filed OPINION #39,877—Pltff's motion that this proceed as a class action is granted. Pltff's motion for summary judgment is granted to the extent that an injunction shall issue permanently enjoining the enforcement of 18 N.Y.C.R.R. Sec. 352.31 (a)(iv) and Sec. 352.30(c) and (d). Pltff's motion is denied to the extent that it seeks an order directing the payment of retroactive welfare payments, and that portion of the complaint is dismissed. Defts' motion to dismiss for failure to state a cause of action is denied, as is its alternative motion for summary judgment. The motions of Clark and D'Alessio to intervene are also denied. The parties are directed to settle an order on notice providing for an appropriate form of injunctive relief—Bauman, J.
Oct. 15-73	Filed judgment & order that pltffs action is maintained as a class action. Ordered that defts motion to dismiss action or in the alternative for summary judgment are denied. The motions to intervene on behalf of Phyllis D'Alessio & Clark are denied. Ordered, that pltffs motion for summary judgment is granted. Ordered that defts, etc. are permanently enjoined from enforcing 18 NYCRR Sec. 352.31(a) (3)iv & 352.30(c) & (d). Ordered, that pltffs

DATE	PROCEEDINGS
	motion for summary judgment is denied that it seeks an order directing payment of retroactive welfare payments. Adjudged & Decreed that pltffs are granted a declaratory judgment. Ordered that order is stayed pending a timely appeal by defts to Court of Appeals, at which time stay will continue pending final disposition of any or all appeals taken herein . . . Bauman, J. Judgment Entered, 10-16-73.
10/26/73	Filed defts. Lare and Lavine notice of appeal from final order and judgment. (n/m to Legal Aid and John S. Mead)
11/1/73	Filed plaintiffs' Notice of Appeal from part of the final judgment and order of October 15, 1973. $5.00 filing fee paid. (m/n)
11/5/73	Filed deft. Kurtis' Notice of Appeal from part of the final judgment and order of October 15, 1973. $5.00 filing fee paid. (m/n)
11/28/73	Filed notice that record on appeal has been certified & transmitted to U.S. Court of Appeals 11-28-73.
12/17/73	Filed affdvt. of Judith A. Gordon
12/17/73	Filed amended Judgment and order that pltffs' motion for summary judgment be and the same hereby is denied to the extent it seeks an order directing the payment of retroactive welfare payments—that execution of this order is stayed pending a timely appeal by defts., at which time this stay will continue pending final disposition of any or all appeals taken—Bauman. J.—Judgment entered—Clerk—m.n.
12/20/73	Filed true copy of USCA order remanding action to the Dist. Court for the purpose of correcting the original judgment—

Relevant Docket Entries in Hurley v. *Van Lare.*

DATE	PROCEEDINGS
6/4/74	Filed pltffs request for production of documents.
6/14/74	Filed Pltffs' Request for Admission of Facts.
6/18/74	Filed Pltffs' Notice of Motion for Three-Judge Court ret 6-21-74.
6/18/74	Filed Pltffs' Memo of Points and authorities in support of motion for 3-Judge Court.
6/18/74	Filed Defts' Affdvt in opposition to 3-Judge Court.
6/18/74	Filed Memo—End on back of Motion for 3-Judge Court filed on 6-18-74.—Motion granted. So Ordered. Bauman, J.
6/26/74	Filed Pltffs' Supplemental Affdvt. in support of motions for Class Action and Summary Judgment.
6/26/74	Filed Proposed Intervenor's affdvt. in support of motion to intervene for a Preliminary Injunction.
6/26/74	Filed Pltffs' memorandum of Points and Authorities.
6/26/74	Filed Appendix to Pltff's memorandum of Points and Authorities.
6/26/74	Filed Defts' Memorandum of Law to the Three-Judge Court.
7/2/74	Filed Affidavit of Linda Harmon dated June 25-74.
7/2/74	Filed Partial Stip of Fact. (filed in 73 Civ 699—Eastern Dist. Ct.)
7/2/74	Filed Lavine's responses to pltffs' interrogs.
7/2/74	Filed ANSWER to the Amended Complaint.
7/3/74	Filed Reply Brief for Pltffs.

Relevant Docket Entries in Hurley v. *Van Lare.*

DATE	PROCEEDINGS
7/8/74	Filed pltffs affdvt & notice of motion to strike certain paragraphs, etc. Ret. 7-19-74.
7/9/74	Filed supplemental affdvt of Rose Hurley in support of motions for class action & summary judgment.
7/15/74	Filed pltffs affdvt in support from Bureau of Social Science Research.
7/22/74	Filed Defts affidavit in opposition to pltffs' motion.
7/24/74	Filed Memo—End on back of Motion filed Jul 8-74. . . . Motion granted. Settle order on two days notice. So Ordered. Bauman, J.
Aug. 1-74	Filed Order that para. 14 & 15 of defts. Van Lare & Lavine's answer and Exhibit "A" to deft. Van Lare and Lavine's answer be and hereby are stricken from the answer, further Ordered that Exhibit "A" to Deft. Van Lare and Lavine's answer be sealed so as to protect the confidentiality . . . Ordered that defts Van Lare & Lavine file an amended answer in conformity with order within 5 days after the date of its entry . . . Bauman, J. m/n
Aug. 1-74	Filed Sealed envelope with Exhibit "A" of Deft's Answer. Ordered sealed by order of Judge Bauman, dated 8-1-74.
Aug. 8-74	Filed transcript of record of proceedings, dated June 26, 1973
Aug. 14-74	Mailed notice of reassignment.
Aug. 14-74	Filed Amended Answer (State defts.)
Aug. 15-74	Filed OPINION #41,063—Sec. 18 N.Y.C. R.R. & 352.30(d) & S352.31(a)(3)(lv) are invalid to the extent stated in this opinion. The parties shall settle an order on forty-

Relevant Docket Entries in Hurley v. *Van Lare.*

DATE	PROCEEDINGS
	eight hours notice. . . . So Ordered— Weinstein, J. Bauman, J.
Aug. 15-74	Filed Judgment & Order. Ordered pltffs. motion for summary judgment is granted to the extent, etc. & defts. their officers, agents, etc. are permanently enjoined as indicated; & pltffs. motion for summary judgment is denied to the extent is seeks an order directing the payment of retroactive welfare payments; & Adjudge & Decreed that pltffs. are entitled to & are granted declaratory judgment as indicated. Judgment Entered 8/19/74 Clerk Entered 8/19/74. (mailed notice)
Aug. 20-74	Filed Notice of Appeal to the Supreme Court of the United States from Judgment & order of the 3 Judge court entered 8/15/74 in the SDNY Court.
Nov. 27-74	Filed Order that the Clerk of this court is hereby authorized & directed to transmit all the original papers filed in this court to the U.S. Supreme Court & said records be returned upon the conclusion of this appeal. Ward J.
Nov. 29-74	Certified & Transmitted the Record to the U.S. Supreme Court.

Relevant Docket Entries in *Taylor* v. *Lavine.*

73 Civ. 699, [E.D.N.Y.] Annie Taylor v. Lavine etc.

DATE	PROCEEDINGS
5-17-73	Complaint filed. Summons issued.
6- 7-73	ANSWER of James M. Shuart filed.
6/18/73	By Weinstein, J.—Order dtd. 6/16/73 extending time for defts'. to answer to 6/26/73 filed.
6-27-73	ANSWER of deft Abe Lavine filed.
7-18-73	Deft Abe Lavine's answers to interrogatories filed.
8- 7-73	By WEINSTEIN, J. Order dated August 6, 1973 for a pre-trial Conference on September 11, 1973 at 9:30. FILED.
8/22/73	Answers to Interrogatories filed. (deft. J. SHUART)
8-27-73	Notice of Motion & Memorandum of law Summary Judgment in favor of Pltff. Returnable Sept 11, 1973 filed.
9-10-73	Memorandum in opposition to Pltff's motion for summary judgment filed.
9/17/73	Deft's Notice of Cross Motion to Dismiss Complaint and for Summary Judgment, ret. 9/17/73 filed. & Memorandum in Support of Motion filed.
9-17-73	Before WEINSTEIN, J. Case called on Pltff's motion for summary judgment, etc. Motion argued—Decision reserved. Letter to be submitted stipulating on the facts.
10-11-73	By WEINSTEIN, J.—Memorandum and order dtd 10-10-73 that defts are urged to reexamine the situation of pltffs & to settle order on 48 hours notice filed. (p/c mailed to attys). MM
10-24-73	Unsigned counter-order filed.

Relevant Docket Entries in Taylor v. *Lavine.*

DATE	PROCEEDINGS
10-24-73	By WEINSTEIN, J.—JUDGMENT & ORDER dtd 10-23-73 maintaining above action as a class action & granting pltffs' motion for summary judgment (as indicated—see order). Execution of this order is stayed for one week pending application to C of A for an additional stay pending final disposition of any or all appeals taken herein filed. (p/c mailed to attys). MM
10-26-73	Notice of appeal filed. (dupl. of appeal mailed to C of A. JN. & Atty)
11-23-73	Notice of appeal filed. Duplicate of appeal mailed to C of A & attys. jn MM
11-28-73	Above record certified & mailed to C. of A.
12/3/73	Acknowledgment recd and filed from the C. of A. for recpt of Index to Record on Appeal and filed.
12/14/73	By WEINSTEIN, J.—Amended Judgment and Order dated 12/14/73 filed. (see Order) P.C. mailed to the Attys.
12/14/73	Affidavit of Constance B. Margolin filed.
12-18-73	By WEINSTEIN, J.—Amended Judgment and order dtd 12-18-73 filed, to supersede judgment and order entered on 10-24-73 etc. filed.
12-21-73	Certified copy of judgment received from C of A remanding action to district court for the purpose of correcting original judgment filed.
5-28-74	Letter from Leonard S. Clark dtd 5-23-74 filed.
5-28-74	By WEINSTEIN, J.—Order dtd 5-28-74 defts requesting response of defts to request for three judge court filed on document #24. (copies mailed to attys).

Relevant Docket Entries in Taylor v. *Lavine.*

DATE	PROCEEDINGS
5-29-74	Copy of letter from Martin A. Schwartz dtd 5-22-74 filed.
5-29-74	By WEINSTEIN, J.—Order dtd 5-24-74 requesting defts to respond to motion for a three judge court filed on document #25. (copies mailed to attys as directed). MM
6/6/74	Before WEINSTEIN, J.—Case called—Pretrial conference held and concluded—Pltffs motion for a 3 judge court is granted—Order signed.
6-6-74	Letter dtd. 6-6-74 from Judge Weinstein to Judge Kaufman filed.
6-7-74	By WEINSTEIN, J.—Order dtd. 6-6-74 granting motion for 3 judge court filed. (p/c to attys) MB
6/11/74	Letter dated 6/7/74 filed from Martin A. Schwartz to J. Weinstein with annexed copy of Motion for 3 Judge Court and Memorandum of Law in Support
6-14-74	Notice to take deposition of agents of deft, Lavine filed.
6-14-74	Request for admission of facts filed.
6-18-74	Memorandum from Judge Bauman dtd 6-13-74 that argument will prooceed on 6-26-74 in S.D.N.Y. filed.
6-18-74	By WEINSTEIN, J.—Order dtd 6-14-74 directing Clerk to notify attys of hearing filed on document #31. (parties notified). MM
6-20-74	By KAUFMAN, C.J.—Order dtd 6-17-74 designating Judge Bauman, Judge Weinstein, and Judge Hays for the three judge court, and consolidating this action with *Hurley* v. *Van Lare* 72C-3423 (SDNY) for purposes of hearing and disposition filed.

Relevant Docket Entries in Taylor v. *Lavine.*

DATE	PROCEEDINGS
6-20-74	By KAUFMAN, C.J.—Order dtd 6-17-74 designating Judge Arnold Bauman (SDNY) to sit in a three judge court in EDNY filed.
6-20-74	By KAUFMAN, C.J.—Copy of order dtd 6-17-74 designating Judge Weinstein to sit in a three judge court in SDNY filed.
6-20-74	By WEINSTEIN, J.—Order dtd 6-19-74 directing Clerk to notify Judge Kaufman of filing of orders re designation of three judge court. Filed. (Judge Kaufman notified as directed).
6-20-74	By Weinstein, J.—Order dtd 6-20-74 directing Clerk to provide xerox copies of above file for Judges Hays & Bauman filed.
6-25-74	By WEINSTEIN, J.—Order to show cause dtd 6-21-74 for an order granting intervention of Francesca Aloise, ret 6-26-74 at 10:30 A.M. at Foley Square before a three judge panel filed.
7/ 3/74	Reply Brief for Pltff's filed.
7-11-74	Letter from Martin A. Schwartz dtd 7-3-74 with annexed motion to strike filed.
7-11-74	Letter from Martin A. Schwartz dtd 7-8-74 with annexed supplemental affidavit filed.
7-11-74	Record on appeal received from C of A. Acknowledgment mailed to Clerk.
7-11-74	Stenographer's minutes dtd 6-26-74 filed (before Bauman).
7-11-74	Stenographer's minutes dtd 6-26-73 filed (three judge court).
7-12-74	Letter from Martin A. Schwartz dtd 7-3-74 filed.
7-12-74	Pltffs' memorandum of points and authorities and appendix filed.

Relevant Docket Entries in Taylor v. *Lavine.*

DATE	PROCEEDINGS
7-12-74	Defts' memorandum of law to three-judge court filed.
7-12-74	Letter dtd. 7-11-74 from Martin A. Schwartz to Judge Weinstein filed.
7-15-74	Proceedings subsequent to remand filed.
7-15-74	Proceedings prior to remand filed.
7-15-74	Defts' memorandum of law to three-judge court filed.
7-19-74	Letter dtd. 7-16-74 from Martin A. Schwartz to Judge Weinstein filed.
7/25/74	Affidavit in Support of Pltff's motion filed.
7-30-74	Certified copy of judgment and copy of opinion received from C of A. reversing judgment of this court, etc. filed. jn
8/16/74	Unsigned Judgment and Order filed.
8/16/74	Amended Answer of Louis J. Lefkowitz filed.
8/16/74	Letter dated Aug. 8, 1974 filed from M. Schwartz to J. Weinstein.

PROCEEDINGS BEFORE THE SINGLE DISTRICT JUDGE.

Hurley* v. *Van Lare
72 Civ. 3423
S.D.N.Y.

Amended Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Class Action
72 Civ. 3423

ROSE HURLEY, individually and on behalf of her minor dependent children, DOREEN HURLEY, JAMIE HURLEY and JOHN HURLEY, and on behalf of all other persons similarly situated,

Plaintiffs,

against

BARRY VAN LARE, individually and in his capacity as Acting Commissioner of the Department of Social Services of the State New York,

ABE LAVINE, individually and in his capacity as Commissioner of the Department of Social Services of the State of New York,

LOUIS P. KURTIS, individually and in his capacity as Commissioner of the Department of Social Services of the County of Westchester,

Defendants.

I.

PRELIMINARY STATEMENT

Plaintiff, individually, and on behalf of her minor dependent children and on behalf of all other persons similarly situated, seeks to have this court restore plaintiffs' rights which were abrogated, denied and deprived by

the defendants' enforcement of 18 N.Y.C.R.R. Sections 352.31(3)(iv) and 352.30(c) and (d) of the regulations of the State Department of Social Services and to have this court declare invalid, unconstitutional and enjoin the above-cited regulations and award retroactive benefits to all members of the class who have been aggrieved by the enforcement of these regulations. These regulations treat a man living with a woman and having no legal responsibility for her support or for the support of her children as a lodger and thereby cause a pro rata reduction in the public assistance grant that the woman and children receive from the State Department of Social Services. The regulations are challenged on the ground that they are in conflict with provisions contained in Article IV, § 2, Clause 1, Article VI, the First, Ninth and Fourteenth Amendments to the Constitution of the United States and subchapter IV of the Social Security Act, 42 U.S.C. §§ 601-609, and regulations promulgated pursuant thereto by the United States Department of Health, Education and Welfare.

II.

Jurisdiction

1. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3) and (4) which provides for original jurisdiction of this Court in all suits authorized by 42 U.S.C. § 1983 to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress without regard to the amount in controversy.

2. Plaintiffs' action for declaratory and injunctive relief, and for retroactive rights to public assistance is au-

thorized by:

(a) 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments.

(b) 42 U.S.C. § 1983 which provides for redress for the deprivation under color of law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.

III.

Three-Judge Court

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 since plaintiff seeks an injunction to restrain defendants, who are state officers, from the enforcement, operation and execution of 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30(c) and (d), of state-wide applicability, on the ground that these regulations are contrary to the Constitution of the United States.

IV.

Plaintiffs

4. The named plaintiff, Rose Hurley, is a citizen of the United States and of the State of New York. She is 26 years of age and is the mother of three (3) children, Doreen Hurley, John Hurley and Jamie Hurley, 10, 5, and 5 years of age respectively. Plaintiff is a resident of the City of Mount Vernon, County of Westchester, State of New York.

4a. The plaintiffs Doreen Hurley, John Hurley and Jamie Hurley are the minor dependent children of plain-

tiff Rose Hurley and are included in Rose Hurley's public assistance grant pursuant to the Federal-State Aid to Families with Dependent Children program.

5. The named plaintiff brings this action individually on her own behalf and on behalf of her minor dependent children and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. The members of the class similarly situated are all residents of the State of New York who are or were receiving public assistance who have had their grants reduced, terminated, suspended or denied, or who are threatened with reduction, termination, suspension or denial solely because of the enforcement of 18 N.Y.C.R.R. § 325.31(3)(iv) and § 352.30(c) and (d) of the Regulations of the New York State Department of Social Services.

6. The requirements of Rule 23(a) of the Federal Rules of Civil Procedure are complied with because:

(1) The class is so numerous that joinder of all members is impracticable;

(2) There are questions of law common to the class, i.e., the constitutional validity of 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30 (c) and (d);

(3) The claims of the representative parties are typical of the claims or defenses of the class, and

(4) The representative parties will fairly and adequately protect the interests of the class.

The requirement of Rule 23(b) of the Federal Rules of Civil Procedure is complied with because the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and declaratory relief with respect to the class as a whole.

Additionally, there are questions of law and fact common to the members of the class which predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VI.

DEFENDANTS

7. Defendant Barry Van Lare was the New York State Acting Commissioner of Social Services at the time the State Fair Hearing decision was rendered. He is being sued individually and in his official capacity.

8. Defendant Abe Lavine is the New York State Commissioner of Social Services. He is being sued individually and in his official capacity.

9. Defendant Louis P. Kurtis is the Commissioner of Social Services for the County of Westchester. He is being sued individually and in his official capacity.

10. The foregoing defendants are charged with the administration, enforcement, operation and execution of New York State's public assistance program and with the enforcement of 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30 (c) and (d) of the Regulations of the State Department of Social Services which is herein challenged as being in conflict with the Constitution of the United States.

VII.

FACTUAL ALLEGATIONS

11. Plaintiff and her three minor children are citizens of the United States and residents of Mount Vernon, New York, and reside together at 90 Brookside Avenue, Mount Vernon, New York. Plaintiff has been living separate and apart from her husband since 1967 and has not seen, heard from, or had any contact with him since 1967 and does not know his whereabouts.

12. Plaintiff and her three minor children are receiving public assistance pursuant to the federal-state AFDC program.

13. A male friend stayed with plaintiff during the months of November and December, 1970, and January and February, 1971.

14. No financial support or contributions were made to the plaintiff by her friend nor was her friend under any legal obligation to provide financial support or assistance to plaintiff or her three children.

15. During the months of November and December, 1970, and January and February, 1971, the Westchester County Department of Social Services deducted $35 per month from plaintiff's recurring grant because of the presence of a "lodger" in plaintiff's household. No explanation was offered by the agency as to the method of computing the $35 per month reduction.

16. Plaintiff's rent was $150 per month during these four months. Plaintiff's rent was not increased by the presence of her male friend.

17. Title 18 N.Y.C.R.R. § 352.31(3)(iv) provides:

> When a female recipient is living with a man to whom she is not married, . . . [and] when the man is unwilling to assume responsibility for the woman or her children and there are no children of which he is the acknowledged or adjudicated father, he shall be treated as a lodger in accordance with Section 352.30 (c).

Section 352.30(c) of the Regulations of the State Department of Social Services provides:

> When an applicant or recipient wilfully fails or refuses to comply with the requirements of Part 385 of

> this Title, the needs of the family shall be determined as if he were a member of the family, however, the grant shall be provided on a pro rata basis for the eligible family members only.

Section 352.30(d) of the Regulations of the State Department of Social Services provides:

> A non-legally responsible relative or unrelated person in the household, who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. . . . In the event a lodger does not contribute at least $15 per month, the family's shelter allowance, including fuel for heating, shall be a pro rata share of the regular shelter allowance.

18. On November 12, 1970, plaintiff requested a State Fair Hearing and on March 22, 1971, a State Fair Hearing was held pursuant to 18 N.Y.C.R.R. Part 369 in White Plains, New York, for the purpose of reviewing the reduction of the plaintiff's grant by the Westchester County Department of Social Services.

19. A decision was rendered on September 20, 1971, by the New York State Department of Social Services. This decision upheld the determination of the Westchester County Department of Social Services reducing plaintiff's grant because of the presence of a lodger in the home, except that the decision held that the Department should have deducted $30 per month instead of $35 per month from plaintiff's grant. In his "Decision After Fair Hearing" the Acting State Commissioner found that:

> (1) Appellant and her three children are in receipt of aid to dependent children.
>
> (2) During the months of November and December, 1970, and January and February, 1971, the agency deducted $35 a month from appellant's recurring grant

because of the presence of a "lodger" in appellant's household. No explanation was offered by the agency as to the method of computation of $35 a month.

(3) Appellant's rent is $150 a month.

(4) A male friend of appellant's resided with her during the months of November and December, 1970, and January and February, 1971.

(5) No contribution was made to the appellant by the friend.

In addition, it was found that:

The record establishes that the man residing with appellant was not willing to assume responsibility for the appellant or her children of which he is the acknowledged or adjudicated father. In addition, no contribution is made by the lodger to the appellant.

The decision of the State Fair Hearing is attached hereto and made a part hereof as Exhibit "A".

19. Despite numerous requests by plaintiff's attorney commencing on or about October 1, 1971, defendants did not provide plaintiff's attorney with a copy of the transcript of the Fair Hearing until on or about January, 1972.

20. As a consequence of Sections 352.31(3)(iv) and 352.30 (c) and (d) of the Regulations of the State Department of Social Services, the plaintiff's public assistance grant was reduced by $30 each month for a period of four months or a sum of $120. Furthermore, plaintiff and her three minor children and all other persons similarly situated have suffered and will continue to suffer grave and irreparable harm, injury, loss and damage through the lack of adequate funds to purchase those necessities requisite for a minimum standard of living and health and will suffer

grave and irreparable harm, injury, loss and damage by not being allowed to freely associate with whomever they please in the privacy of their own home.

21. Plaintiff wishes to associate with and have her male friend reside with her at her place of residence. However, she is prevented from doing so because she fears her public assistance grant will be reduced as it was in the past by the enforcement of Title 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30(c) and (d). If she associates with her male friend and allows him to reside with her, the grant to herself and her children will be reduced in accord with Title 18 N.Y.C.R.R. § 352.30(3)(iv) and she and her family will suffer grave and irreparable harm to their health, safety and well being.

CAUSE OF ACTION

22. Title 18, Section 352.31 of the Regulations of the Department of Social Services of the State of New York provides *inter alia:*

> (a)(3) When a female or recipient is living with a man to whom she is not married, other than on an occasional basis, his available income and resources shall be applied in accordance with the following . . .
>
> (iv) when the man is unwilling to assume responsibility for the woman or her children and there are no children of which he is the acknowledged or adjudicated father, he shall be treated as a lodger in accordance with section 352.30(c)[d].

Section 352.30(c) of the regulation of the State Department of Social Services provides:

> When an applicant or recipient wilfully fails or refuses to comply with the requirements of Part 385 of

this Title, the needs of the family shall be determined as if he were a member of the family, however, the grant shall be provided on a pro-rata basis for the eligible family members only.

Section 352.30 (c) of the regulations of the State Department of Social Services provides that:

A non-legally responsible relative or related person in the household who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the lodger, the amount in excess of $15 per month shall be considered as income; for such boarding lodgers, the amount in excess of $60 per month shall be considered as income. In the event a lodger does not contribute at least $15 per month, the family's shelter allowance including fuel for heating shall be a pro rata share of the regular shelter allowance.

23. 45 C.F.R. § 203.1 provides:

(a) A state plan for aid and services to needy families with children under Part A of Title IV of the Social Security Act, to be approved under section 402 of such Act (42 U.S.C. 602), must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to a child's stepparent who is ceremonially married to the child's natural or adoptive

parent and is legally obligated to support the child under state law of general applicability, which requires stepparents to support stepchildren to the same extent thta natural or adoptive parents are required to support their children.

(b) The inclusion in the family, or the presence in the home, of a 'substitute parent' or 'man-in-the-house' or any individual other than one described in paragraph (a) of this section is not an acceptable basis for a finding of ineligibilty or for assuming the availability of income by the State . . . [I]n the consideration of all income and resources in establishing financial eligibility and the amount of assistance payment only such income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in paragraph (a) of this section will be considered available for children in the household in the absence of proof of actual contribtuions. 45 C.F.R. § 203.1 33 Fed. Reg. 11290.

24. That 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30(c) and (d) are inconsistent with and in conflict with 42 U.S.C. § 601-610 and the federal regulations promulgated pursuant thereto, i.e., 45 C.F.R. § 203.1. 42 U.S.C. § 602(a)(10) provides *inter alia* "A state plan for aid and services to needy families with children must provide . . . aid to families with dependent children shall be furnished with reasonable promptness to *all eligible individuals* [Emphasis added]." The New York regulations are therefore unconstitutional in violation of the Supremacy Clause of the United States Constitution, Article IV, § 2, Cl. 1.

25. That the foregoing New York State regulatory scheme of the Department of Social Services arbitrarily

and irrationally creates two classes of equally needy families in violation of the due process, equal protection, and privileges and immunities clauses of the Fourteenth Amendment to the United States Constitution. One class is composed of needy families who are fully eligible to receive public assistance because no man is a "lodger" in the household. Another class is composed of needy families who are otherwise fully eligible to receive public assistance but will receive a reduced amount of assistance because a man who is not legally related or obligated to and in fact does not monetarily support the mother and children is determined to be a "lodger" in the household. families who are otherwise fully eligible to receive public assstance but will receive a reduced amount of assistance because a man who is not legally related or obligated to and in fact does not monetarily support the mother and children is determined to be a "lodger" in the household.

26. That the foregoing New York State regulatory scheme of the Department of Social Services creates an arbitrary and irrational distinction among male and female lodgers by causing a pro rata reduction in the grant only where male lodgers are present and is invidiously discriminatory against female welfare recipients who choose, permit or allow a male to become a lodger in their household and this is in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

27. By reducing plaintiff's public assistance grant through the enforcement of 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30(c) and (d), i.e., solely because the Department of Social Services determined that plaintiff had a male lodger in her household defendants have violated plaintiff's rights of privacy and freedom of association as guaranteed by the First and Fourteenth Amendments

to the United States Constitution and the Ninth Amendment to the United States Constitution.

28. That 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30(c) and (d) irrationally create a conclusive presumption that a man determined to be a "lodger" in the plaintiff's household has the ability to provide and in fact provides the family with income thus enabling the Department of Social Services to reduce the plaintiff's grant. This conclusive presumption is arbitrary and irrational and is a violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, plaintiffs pray on behalf of themselves and all others similarly situated that this Court:

1. Assume jurisdiction of this action and convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and § 2284.

2. Issue a permanent injunction enjoining defendants, their employees, officers, agents, successors and all other persons in active concert and participation with them from enforcing 18 N.Y.C.R.R. § 352.31(3)(iv) and § 352.30(c) and (d).

3. Issue a permanent injunction mandating defendants, their employees, officers, agents, successors and all other persons in concert and participation with them to afford plaintiffs and all others similarly situated their right to the retroactive public assistance that defendants have wrongfully deducted pursuant to 18 N.Y.C.R.R. §§ 352.31 (3)(iv) and 352.30(c) and (d).

4. Issue a final judgment declaring 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30(c) and (d) unconstitutional and in violation of the privileges and immunities, due process, and equal protection clauses of the Fourteenth

Amendment to the United States Constitution, the freedom of association and right of privacy guaranteed by the First and Ninth Amendments to the United States Constitution, the supremacy clause, Article VI of the United States Constitution and the Federal Social Security Act, 42 U.S.C. § 601 set seq. and the regulations promulgated thereunder by the United States Department of Health, Education and Welfare.

5. Declare this action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

6. Award plaintiffs their costs, disbursements and attorneys fees herein.

7. Award plaintiffs such other, further and different relief as to this Court may appear just and equitable.

Dated: August 28, 1972, Mount Vernon, N. Y.

Respectfully submitted,

JEROLD S. SLATE
THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY
JEROLD S. SLATE, Of Counsel
MARTIN A. SCHWARTZ, Of Counsel
Attorneys for Plaintiff

(Verified by Rose Hurley, August 28, 1972.)

Notice of Motion for an Order Determining Class Action and Summary Judgment on Behalf of Rose Hurley.

[SAME TITLE]

To the Defendants:

Please take notice that upon all the papers heretofore filed with the Court and more particularly upon the amended verified complaint herein upon the plaintiff's affidavit, upon the affidavit of Jerold S. Slate, Esq., and the exhibits attached and annexed thereto, plaintiffs will move this Court at a Motion Term, to be held at the United States Courthouse in Room 506, Foley Square, New York, New York, on the 31 day of January, 1973, at 10:00 a.m. or as soon thereafter as counsel can be heard:

1. For an order determining the within action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

The grounds of this motion, as are more fully set forth in plaintiff Hurley's memorandum of points and authorities submitted in this action, are that:

(a) The class is so numerous that joinder of all members is impracticable;

(b) There are questions of law and fact common to the class;

(c) The claim of the representative plaintiffs is typical of the claims of the class and it can reasonably be expected that defendants will interpose identical defenses to such claim;

(d) The Legal Aid Society of Westchester County will fairly and adequately protect the interests of the class and;

Notice of Motion for an Order Determining Class Action and Summary Judgment on Behalf of Rose Hurley.

(e) Defendants have acted and refused to act on grounds generally applicable to the class thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

2. For an order pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting final summary judgment in favor of plaintiffs and the class which they represent and against the defendants for the declaratory and injunctive relief, including retroactive welfare payments, prayed for in paragraphs 2, 3 and 4 of the Wherefore Clause of the Amended Verified Complaint, based on the invalidity and unconstitutionality of 18 N.Y.C.R.R. 352.31(3)(IV) and 352.30(c) and (d).

The grounds of this motion, as are more fully set forth in the memorandum of points and authorities submitted in support of this motion, are that there is no genuine issue of material fact and plaintiffs are entitled to judgment as a matter of law in that 18 N.Y.C.R.R. §§ 352.31(3)(IV) and 352.30(c) and (d) are invalid and unconstitutional under the United States Constitution, Article IV, § 2, Clause 1, Article VI and the First, Ninth and Fourteenth Amendments to the United States Constitution, and in conflict with subchapter IV of the Social Security Act, 42 U.S.C. §§ 601-609 and the regulations promulgated pursuant thereto by the United States Department of Health, Education and Welfare.

Plaintiffs further move that if summary judgment is not rendered in plaintiffs' favor for all of the relief prayed for herein and a trial is necessary, that the Court, at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts are actually and in good faith controverted,

and thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

PLEASE TAKE FURTHER NOTICE that any opposing affidavits and answering memoranda must be served upon counsel for plaintiffs at least three days before the return date of this motion.

Dated: January 16, 1973, Yonkers, New York.

Respectfully submitted,

/s/ THE LEGAL AID SOCIETY OF WESTCHESTER COUNTY
JEROLD S. SLATE, of Counsel
MARTIN A. SCHWARTZ, of Counsel

Affidavit of Rose Hurley in Support of Motion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

ROSE HURLEY, being duly sworn, deposes and says that:

1. I reside at 90 Brookside Avenue, Mount Vernon, New York, with my three (3) children, Doreen Hurley, Jamie Hurley and John Hurley, ten (10), five (5), and five (5) years of age respectively.

2. I make this affidavit on behalf of myself, my three minor dependent children who are plaintiffs herein and on behalf of all other plaintiffs similarly situated in support of plaintiffs' motion for a class action determination. I have personal knowledge of all of the facts set forth herein.

3. The plaintiffs Doreen Hurley, Jamie Hurley and John Hurley are my minor dependent children and are included in my public assistance grant pursuant to the Federal-State Aid to Families with Dependent Children program.

4. I have been living separate and apart from my husband since 1967 and have not seen, heard from or had any contact with him since 1967 and do not know his whereabouts.

5. My children and I are currently receiving public assistance pursuant to the federal-state AFDC program.

6. A male friend of mine stayed with me during the months of November and December, 1970, and January and February, 1971.

7. No financial support or contributions were made to me or my children or on our behalf by my male friend and he was not under any legal obligation to provide financial support or assistance to me or my three children.

8. During the months of November and December of 1970, and January and February of 1971, the Westchester County Department of Social Services deducted $35 per month from my recurring grant because of the presence of a "lodger" in my household. No explanation was offered by the agency as to the method of computing the $35 per month reduction.

9. My monthly rent prior to and during the four month period that my public assistance grant was reduced was $150 per month. My monthly rental was not increased by the presence of my male friend in my home.

10. During this four month period I had to use money that I would have otherwise used for necessary food and clothing for myself and my children for my rent. During this four month period my children and I suffered irreparable injury because we did not have proper food or clothing.

11. On November 12, 1970, I requested a State Fair Hearing and on March 22, 1971, a State Fair Hearing was held pursuant to 18 N.Y.C.R.R. Part 369 in White Plains, New York, for the purpose of reviewing the reduction of my public assistance grant by the Westchester County Department of Social Services. A decision was rendered on September 20, 1971, by the New York State Department

of Social Services. This decision upheld the determination of the Westchester County Department of Social Services reducing my grant because of the presence of a lodger in my home, except that the decision held that the Department should have deducted $30 per month instead of $35 per month from my grant. A copy of the decision is attached hereto.

12. In his "Decision After Fair Hearing" the Acting State Commissioner Barry Van Lare found that:

1) Appellant and her three children are in receipt of aid to dependent children.

2) During the months of November and December 1970, and January and February 1971, the agency deducted $35 a month from appellant's recurring grant because of the presence of a "lodger" in appellant's household. No explanation was offered by the agency as to the method of computation of $35 a month.

3) Appellant's rent is $150 a month.

4) A male friend of appellant's resided with her during the months of November and December 1970, and January and February 1971.

5) No contribution was made to the appellant by the friend.

In addition, it was found that:

> The record establishes that the man residing with appellant was not willing to assume responsibility for the appellant or her children of which he is not the acknowledged or adjudicated father. In addition, no contribution is made by the lodger to the appellant.

A copy of the Fair Hearing Decision is annnexed hereto as Exhibit "A".

13. The primary reason my male friend is not presently residing with me is because of the previous enforcement of 18 N.Y.C.R.R. 352.31(IV) and 352.30(c) and (d) so as to reduce my welfare allowance. I still desire to see my male friend and have him visit me and stay with me at my house on more than an occasional basis. However, I feel threatened and fear that if I allow my friend to stay with me the Department of Social Services of the State of New York will enforce Title 18 N.Y.C.R.R. § 352.31(IV) and § 352.30 (c) and (d) as they have done in the past and will reduce my public assistance grant. The reduction of my welfare grant causes grave and irreparable harm to the health, safety and well being of myself and my three minor dependent children because of a lack of adequate funds to purchase those necessities requisite for a minimum standard of living and health. I and my children are presently suffering grave and irreparable harm, injury, loss and damage by not being allowed to freely associate with my male friend.

WHEREFORE, plaintiffs respectfully pray that this Court grant their motion for a class action determination and summary judgment.

(Sworn to by Rose Hurley, January 16, 1973.)

Decision After Fair Hearing, Exhibit "A" to Hurley Affidavit.

In the Matter of the Appeal of

ROSE HURLEY

from a determination by the Westchester County Department of Social Services (hereinafter called the agency)

A fair hearing was held at White Plains, New York, on March 22, 1971, before Edward Hubbard, Hearing Officer, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of aid to dependent children, in that the agency had deducted $35 a month from the appellant's budget for the month of November, and December, 1970, and January and February of 1971. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant and her three children are in receipt of aid to dependent children.

(2) During the month of November and December, 1970, and January and February, 1971, the agency deducted $35 a month from appellant's recurring grant because of the presence of a "lodger" in appellant's household. No explanation was offered by the agency as to the method of computation of $35 a month.

(3) Appellant's rent is $150 a month.

(4) A male friend of appellant's resided with her during the months of November and December, 1970, and January and February, 1971.

Decision After Fair Hearing, Exhibit "A" to Hurley Affidavit.

(5) No contribution was made to the appellant by the friend.

Section 352.31(3)(iv) of the Regulations of the State Department of Social Services provides that when a female recipient is living with a man to whom she is not married . . . and when the man is unwilling to assume responsibility for the woman or her children and there are no children of which he is the acknowledged or adjudicated father, he shall be treated as a lodger in accordance with Section 352.30(c) of the Regulations.

Section 352.30(c) of the Regulations of the State Department of Social Services provides that in the event a lodger does not contribute at least $15 a month, the family shelter allowance including fuel for heating, shall be a prorata share from the shelter allowance.

The record establishes that the man residing with appellant was not willing to assume responsibility for the appellant or her children and there are no children of which he is the acknowledged or adjudicated father. In addition, no contribution is made by the lodger to the appellant. Accordingly, the agency should have deducted $30 a month from the cost of shelter as his prorata share of rent.

DECISION: The determination of the agency is reversed. The agency is directed to recompute the appellant's grant for the months involved in accordance with the foregoing and to issue a grant in the amount of the difference between what the appellant should have received, and that which she did receive. The agency is further directed to report to the Area 5 Office of the State Department of Social Services on its action taken pursuant to this decision in accordance with the provisions of Section 84.19 of the Rules of the State Board of Social Welfare.

DATED: Albany, New York

Sep 20 1971

BARRY VAN LARE
Acting Commissioner

Statement Pursuant to General Rule 9-G of the Rules of the Southern District of New York in Support of Motion for Summary judgment.

[SAME TITLE]

The material facts as to which it is contended that there is no genuine issue to be tried are as follows:

1. Plaintiff Rose Hurley and her three children are presently in receipt of the federally-state funded public assistance program of Aid to Families with Dependent Children (AFDC).

2. During the months of November and December 1970, and January and February 1971, plaintiff Rose Hurley and her three minor dependent children were receiving AFDC from the Westchester County Department of Social Services and they have continued to receive such AFDC through the commencement of this action.

3. During the months of November and December 1970, and January and February 1971, the public assistance grant to plaintiff Rose Hurley and her three children was reduced by $35 per month because of the presence of a male friend in their home.

4. No financial support or contribution was made to plaintiff or her children or on her behalf by her male friend and he was not under any legal obligation to provide financial assistance or support to her or her three children.

5. Plaintiff's monthly rental prior to and during the four month period that her public assistance was reduced was $150 per month. Her monthly rental was not increased by the presence of her male friend in her home.

Statement Pursuant to General Rule 9-G of the Rules of the Southern District of New York in Support of Motion for Summary Judgment.

6. A New York State Fair Hearing was held on March 22, 1971, for the purpose of reviewing the reduction of the plaintiff's grant.

7. A decision was rendered on September 20, 1971, by the New York State Department of Social Services.

8. In his "Decision After Fair Hearing" the Acting State Commissioner Barry Van Lare found that:

1) Appellant and her three children are in receipt of Aid to Dependent Children.

2) During the months of November and December 1970, and January and February 1971, the agency deducted $35 a month from appellant's recurring grant because of the presence of a "lodger" in appellant's household. No explanation was offered by the agency as to the method of computation of $35 a month.

3) Appellant's rent is $150 a month.

4) A male friend of appellant's resided with her during the months of November and December 1970, and January and February 1971.

5) No contribution was made to the appellant by the friend.

In addition, it was found that:

> The record establishes that the man residing with appellant was not willing to assume responsibility for the appellant or her children of which he is not the acknowledged or adjudicated father. In addition, no contribution is made by the lodger to the appellant.

Statement Pursuant to General Rule 9-G of the Rules of the Southern District of New York in Support of Motion for Summary Judgment.

9. The only reason plaintiff's male friend is not presently residing with her is because of the previous enforcement of, and threatened future enforcement of 18 N.Y.C.R.R. 352.31(IV) and 352.30(c) and (d) which would reduce her public assistance grant. Plaintiff still desires to see her male friend and have him visit her and stay with her at her house on more than an occasional basis. However, plaintiff feels threatened and fears if she allows her friend to stay with her the Department of Social Services of the State of New York will enforce Title 18 N.Y.C.R.R. § 352.31(IV) and § 352.30(c) and (d) as they have done in the past and will reduce her public assistance grant.

Dated, January 16, 1973

Yonkers, New York

Respectfully submitted,

THE LEGAL AID SOCIETY OF WESTCHESTER COUNTY
Jerold S. Slate, of Counsel
Martin A. Schwartz, of Counsel
Attorneys for Plaintiffs

Notice of Motion to Intervene, for Preliminary Injunction and Class Action Determination on Behalf of Phyllis D'Alessio.

[SAME TITLE]

To the Defendants:

Please take notice, that Phyliss D'Alessio, Cathy Lenore D'Alessio and Christine Marie D'Alessio, the proposed plaintiff-intervenors, will bring on for hearing before the United States District Court in room 705 of the United States Courthouse, Foley Square, New York, New York on March 9, 1973 at 9:00 a.m. or as soon thereafter as counsel may be heard, a motion:

1. For an order permitting Phyllis D'Alessio, Cathy Lenore D'Alessio and Christine Marie D'Alessio to intervene in this action pursuant to Rule 24(b)(2) of the Federal Rules of Civil Procedure as party plaintiffs.

The grounds of this motion, as are more fully set forth in the proposed intervenors-plaintiffs' complaint, the affidavit in support of this motion and in the memorandum of points and authorities submitted in support of this motion, are that:

The proposed intervenors are members of the class purported to be represented by the named plaintiffs and that the proposed intervenors' claims and the claims of the named plaintiffs contain an identical question of law, i.e., the constitutionality and validity of 18 N.Y.C.R.R. 352.31(3)(iv) and 352.30(c) and (d). Permitting the applicants to intervene will not unduly delay or prejudice the adjudication of the rights of the original parties.

2. A preliminary injunction pursuant to rule 65 of the Federal Rules of Civil Procedure restraining defendants

Notice of Motion to Intervene, for Preliminary Injunction and Class Action Determination on Behalf of Phyllis D'Alessio.

Abe Lavine and Louis P. Kurtis, their successors, agents and employees and all persons in active concert and participation with them, from reducing the proposed plaintiff-intervenors public assistance grant based on the enforcement of 18 N.Y.C.R.R. 352.31(3)(iv) and 352.30(c) and (d) pending the final determination of this action.

The grounds of this motion, as are more fully set forth in the proposed intervenors' verified complaint, in the proposed intervenor's affidavit annexed hereto, and in the proposed intervenors' memorandum of points and authorities submitted in support of this motion are that:

The enforcement of 18 N.Y.C.R.R. 352.31(3)(iv) and 352.30(c) and (d) so as to reduce intervenors' public assistance will cause intervenors grave and irreparable injury, and that intervenors have established probable success of their claim that these regulations are invalid and unconstitutional.

3. For an order determining the within action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

The grounds of this motion, as are more fully set forth in the named plaintiffs' memorandum of points and authorities submitted in this action, are that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claim of the representative plaintiffs are typical of the claims of the class and it can reasonably be expected that defendants will interpose identical defenses to such claims; (4) The Legal Aid Society of Westchester County will fairly and adequately protect the interests of the class, and; (5) defendants have acted and refused to act on

grounds generally applicable to the class thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

PLEASE TAKE FURTHER NOTICE, that opposing affidavits and answering memoranda must be served upon counsel for plaintiffs at least three days before the return day of this motion.

Dated: February 5, 1973, Yonkers, New York

Respectfully submitted,

MARTIN A. SCHWARTZ
The Legal Aid Society of
Westchester County
Jerold S. Slate, of Counsel
Martin A. Schwartz, of Counsel
Attorneys for Intervenors-Plaintiffs

Affidavit of Phyllis D'Alessio in Support of Motion.

[SAME TITLE]

COUNTY OF WESTCHESTER }
STATE OF NEW YORK } ss.:

PHYLLIS D'ALESSIO being duly sworn deposes and says:

1. That I am one of the proposed intervenors in the above captioned action. I make this affidavit in support of my motions to intervene for preliminary injunction and class action determination in the above captioned action. I have personal knowledge of the facts set forth herein.

2. My two minor children and I are citizens of the United States and residents of Mount Vernon, New York, and reside together at 40 South West Street, Mount Vernon, New York. I was married in 1962 and have not seen, heard or been in contact with my husband since July 1965 and do not know where he presently can be located.

3. I am thirty (30) years of age and reside with my two minor children, Cathy Lenore D'Alessio age 9½, and Christine Marie D'Alessio age 8, and my male friend, Harry Edward Mottola, who is forty-nine years of age.

4. My two minor children and I are receiving public assistance pursuant to the federal-state AFDC program and have been receiving such assistance for approximately the last 6½ years.

5. Over the past six to seven years I have been hospitalized approximately twelve times and have undergone surgical operations for a herniated disc removal, spinal fusion, several fibris tumor operations on both feet and a hysterectomy due to a cervical tumor.

6. My male friend has stayed with my children when I was in the hospital and has stayed with me each time I was released from the hospital during the period of my convalescence and has stayed with my children and me for additional periods including Christmas and Easter holidays.

7. Prior to my residence at 40 South West Street, Mount Vernon, New York, I resided at 117 North Terrace Avenue, Mount Vernon, New York and 324 East 4th Street, Mount Vernon, New York. During all of the time that I resided in Mount Vernon, my male friend resided with me

for more than two months each year. We have resided together for various times in the last 6 years. During the months of December 1972 and January 1973, Mr. Mottola resided with me continuously. Mr. Mottola presently resides with my children and myself and we intend to reside together in the future. Mr. Mottola and I intend and desire to be married.

8. I have not been able to marry Mr. Mottola because I have been unable to obtain a divorce from my husband. I have made efforts to obtain a divorce through The Legal Aid Society of Westchester County, but my file was closed because I was not able to pay the divorce court costs and fees, and because the Westchester County Department of Social Services would not authorize payment for such costs and disbursements. (See Exhibits A, B, C and D of proposed intervenors' verified complaint).

9. On each occasion that I was in the hospital and was convalescing, my male friend took care of my children and me; did shopping for food; washed the family's clothes; cooked the family's meals; prepared the children for school in the morning, cleaned the house and cared for the family in the evening. I was not able to carry out these family and household functions because of my illness and convalescence.

10. During the time I resided at 324 East 4th Street, Mount Vernon, New York, the presence of my male friend in the D'Alessio's household was necessary because I resided in a high crime area and several attacks were made on my children.

11. Over the past several years I have come to regard my male friend as a husband and my children call him "daddy".

12. My male friend is forty-nine years of age and is presently unable to work because he had a prostate infection and now has "pinolitis cyst" and stomach problems. My friend supports himself by performing various jobs, such as a truck driver's helper, locker room attendant and a golf caddy. He has also received unemployment insurance. At no time has he received any public assistance, or financial support from plaintiffs. He is not legally related to me or my children and is under no legal obligation to support us, and in fact has provided no financial support for us.

13. My present public assistance grant is $336 and I have received a letter from the County of Westchester Department of Social Services dated January 22, 1973 indicating that my public assistance grant will be reduced to $292.40 effective February 1, 1973. The letter provides that:

> "Quality control reports of 1Ø/15/72 [sic] indicated that Mr. Mattrola [sic] resides with you and your family. Therefore we are pro-rating your rent ¾ of $175 = $131.40." See Exhibit "E".

14. On January 30, 1973 I received a letter from the Department of Social Services of Westchester County stating:

> "Dear Mrs. D'Alessio:
>
> We are sending you an additional check of $43.60 in addition to your regular recurring grant of $292.40 for the month of February.
>
> As of March 1, 1973 we will be sending you just $292.40 per month. Perhaps this can give you sometime to make the necessary adjustments." See Exhibit "F".

15. The health, safety and well being of my children and myself would be imminently endangered if my public assistance grant is reduced. Our rights of privacy and freedom to associate with our friend in our household is being penalized, jeopardized, infringed and restricted by the Westchester County Department of Social Services by the enforcement of 18 N.Y.C.R.R. §§ 352.31(3)(iv) and 352.30(c) and (d).

16. My current rent is $175 and has been the same since October 1, 1971. The amount of rent that I pay is not and has not been increased by the presence of my friend in my household. My present apartment contains two bedrooms which is the minimum for myself and two daughters.

WHEREFORE, I respectfully pray that this Court grant my motions to intervene, for a preliminary injunction and class action determination.

(Sworn to by Phyllis D'Alessio, February 6, 1973.)

Correspondence Regarding Matrimonial Action, Exhibits "A", "B", "C" and "D" to D'Alessio Affidavit.

June 12th, 1969

Mr. Morelli
Department of Social Services
9 South First Avenue
Mt. Vernon, New York

Dear Mr. Morelli:

Re: Phyllis D'Alessio

Mrs. D'Alessio has informed me that you would like a breakdown of the fees that will be necessary in pursuing her divorce action. The fees that will be incurred are as follows:

a. $150.00 ..... This sum is for the necessary cost of publishing the summons in the newspaper.

Under the Domestic Relations Law as it now exist, the summons must be served in one of two ways, either personally, or if the husband cannot be found, by publishing the summons in the newspaper. In Mrs. D'Alessio's case her husband has been absent for some time, and since we cannot locate him, we have no alternative but to publish the summons.

b. $5.00 ..... Securing an index number.

c. $20.00 ..... Placing the matter on the Court calendar.

d. $15.00 ..... The cost of the transcript with which it is necessary to secure the judgment.

Exhibit "A" to D'Alessio Affidavit.

In Mrs. D'Allessio's case we have secured the Court's permission to proceed as a poor person in which case the County will pay the costs of items b, c, & d. As far as item "a" is concerned, in speaking with the County attorney, I was advised to try to secure this amount from the Westchester County Department of Social Services as the County does not have provisions for paying the same.

Accordingly, I am requesting of the Department of Social Services the sum of $150.00 as aforesaid to cover the cost of publication.

Should there be any questions, please do not hesitate to call this office or contact the undersigned.

Very truly yours,

Michael S. La Bush
Attorney at Law

MSL:ksb

Exhibit "B" to D'Alessio Affidavit.

COUNTY OF WESTCHESTER

DEPARTMENT OF PUBLIC WELFARE

DIVISION OF FAMILY AND CHILD WELFARE

9 SOUTH FIRST AVENUE, MOUNT VERNON, N. Y. 10550

Tel. 664-4234

EDWIN G. MICHAELIAN
County Executive

LOUIS P. KURTIS
Commissioner
JOHN J. ALLEN
Director

June 16, 1969

Michael S. La Bush, Esq.
Legal Aid Society of Westchester
County
City Hall
Mount Vernon, New York

Re: Mrs. Phyllis D'Alessio

Dear Mr. La Bush:

This is to acknowledge your letter dated June 12, 1969, regarding the above named.

This letter has been referred to Mr. Charles White, Supervisor of Legal Services, to determine which of the requested fees shall be authorized by Westchester County Department of Social Services. Upon receipt of an answer, we shall notify you when same are authorized to Mrs. D'Alessio.

Very truly yours,

MADELINE T. CARTER
Mrs. Madeline T. Carter
District Supervisor

MTC:BRR
CC: Mr. Charles White

Exhibit "C" to D'Alessio Affidavit

December 16, 1969

Mrs. Madeline T. Carter, Dist. Supervisor
Division of Family and Child Welfare
9 South First Avenue
Mount Vernon, New York 10550

re: Mrs. Phyllis D'Alessio
Our file No. WH 2083 M

Dear Mrs. Carter:

I am enclosing herewith photostatic copy of a letter which I received from you on June 16, 1969 with reference to the above named person.

I have not received any further word from you as to the outcome of your request for assistance for Mrs. D'Alessio's publication expenses for her divorce action.

I would appreciate hearing from you.

Very truly yours,

Michael S. La Bush

MSL:fb
enclosure

Exhibit "D" to D'Alessio Affidavit

July 20, 1970

Mrs. Phyllis D'Alessio
324 East Fourth Street
Mount Vernon, New York

re: D'Alessio v. D'Alessio
Our file No. WH 2083

Dear Mrs. D'Alessio:

We have been unable to obtain the necessary funds from the Division of Social Services to cover disbursements to be incurred in the prosecution of your divorce action.

Will you please let us know if you are able to pay for the costs so that we can know what to do with your file.

Very truly yours,

Frances Berger
Secretary

Notice of Intent to Change Public Assistance Status, Exhibit "E" to D'Alessio Affidavit.

EDWIN G. MICHAELIAN
County Executive

LOUIS P. KURTIS
Commissioner
JOHN J. ALLEN
Director

COUNTY OF WESTCHESTER

DEPARTMENT OF SOCIAL SERVICES

DIVISION OF FAMILY AND CHILD SOCIAL SERVICES

NOTICE OF INTENT TO CHANGE PUBLIC ASSISTANCE STATUS

Phyllis D'Alessio
40 S. West Street
Mt. Vernon, New York

Category and
Case No.: F-015835

Date: 1/22/73

This is to advise you that this department intends to

( ) Discontinue
(x) Reduce from $336.00 to $292.40 your Public Assistance
( ) Suspend

grant on 2/1/73 for the following reasons(s):
(proposed date)

Quality control reports of 1Ø/15/72 indicates that Mr. Mattrola resides with you and your family. Therefore we are pro-rating your rent ¾ of 175 = 131.40.

You may have a conference at the department address noted by the number at the bottom of this page to review

your case at any time before the proposed date of change in the status of your grant.

R. Goldfinger RG (Signed) 1/22/73 (Date)

RIGHT TO A FAIR HEARING

If you believe the status of your assistance should not be changed, you may request a state fair hearing by telephoning 212-488-6550, or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12200. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why the status of your assistance should not be changed, as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date proposed for the change in the status of your assistance, you will continue to receive your assistance unchanged, until the fair hearing decision is issued.

(2 copies to recipient)
(1 copy to Albany)
(1 copy to Mr. Dravis)
(1 copy to file)

Memorandum from Rachel Goldfinger to Phyllis D'Alessio, Exhibit "F" to D'Alessio Affidavit.

1/30/73

Dear Mrs. D'Alessio,

We are sending you an additional check of $43.60 in addition to your regular recurring grant of $292.40 for the month of February. As of March 1, 1973 we will be sending you just $292.40 per month. We hope this can give you some time to make the necessary adjustments.

Very truly your,

(Mrs.) Rachel Goldfinger
(Inc. Maint Line Sup)

Notice of Motion to Intervene and for Preliminary Injunction on Behalf of Loretta Clark.

[SAME TITLE]

To the Defendants:

Please take notice, that Loretta Clark, individually and on behalf of her minor children, will bring on for hearing before the United States District Court in room 705 of the United States Courthouse, Foley Square, New York, New York on April 2, 1973 at 9:00 a.m. or as soon thereafter as counsel may be heard, a motion:

1. For an order permitting Loretta Clark to intervene in this action pursuant to Rule 24(b)(2) of the Federal Rules of Civil Procedure as party plaintiffs.

The grounds of this motion, as are more fully set forth in the proposed intervenor-plaintiffs' complaint, the affidavit in support of this motion are that:

The proposed intervenors are members of the class purported to be represented by the named plaintiffs and that the proposed intervenors' claims and the claims of the named plaintiffs contain an identical question of law, i.e., the constitutionality and validity of 18 N.Y.C.R.R. 352.31(3)(iv) and 352.30(c) and (d). Permitting the applicants to intervene will not unduly delay or prejudice the adjudication of the rights of the original parties.

2. A preliminary injunction pursuant to rule 65 of the Federal Rules of Civil Procedure restraining defendants Abe Lavine and Louis P. Kurtis, their successors, agents and employees and all persons in active concert and participation with them, from reducing the proposed plaintiff-

intervenors public assistance grant based on the enforcement of 18 N.Y.C.R.R. 352.31(3)(iv) and 352.30(c) and (d) pending the final determination of this action.

The grounds of this motion, as are more fully set forth in the proposed intervenors' verified complaint, in the proposed intervenor's affidavit annexed hereto, are that:

The enforcement of 18 N.Y.C.R.R. 352.31(3)(iv) and 352.30(c) and (d) so as to reduce intervenors' public assistance will cause intervenors grave and irreparable injury, and that intervenors have established probable success of their claim that these regulations are invalid and unconstitutional.

PLEASE TAKE FURTHER NOTICE, that opposing affidavits and answering memoranda must be served upon counsel for plaintiffs at least three days before the return day of this motion.

Dated: March 19, 1973
Buffalo, New York

Respectfully submitted,

MARGARET DODD
THE LEGAL AID BUREAU OF BUFFALO, INC.
NEIGHBORHOOD LEGAL SERVICES
MICHAEL A. O'CONNOR, of Counsel
MARGARET DODD, of Counsel

Affidavit of Loretta Clark in Support of Motion.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF ERIE } ss.:
CITY OF BUFFALO }

LORETTA CLARK, being duly sworn deposes and says:

1. That I am one of the proposed intervenors in the above captioned action. I make this affidavit in support of my motions to intervene for preliminary injunction on behalf of myself and my minor children.

2. My five minor chilidren and I are citizens of the United States and residents of Buffalo, New York, and reside together at 249 Moselle, Buffalo, New York. I was divorced in September, 1967 and have not seen, heard or been in contact with my husband for several years and do not know where he presently can be located.

3. I am thirty-nine (39) years of age and reside with my five minor children, Loretta Jean Clark age 12, Betty Anne Clark age 11, Lillian Marie Clark age 9 and Clara and Dawn Clark, twins age 6, and my male friend, Sidney Ray who is forty-four (44) years of age.

4. My five minor children and I are receiving public assistance pursuant to the federal-state AFDC program and have been receiving such assistance for approximately the last twelve years.

5. I currently receive outpatient treatment for nervous tension twice weekly at the Meyer Memorial Hospital in Buffalo, in February, 1973 I was a full time patient at the

Affidavit of Loretta Clark.

Meyer Hospital with a severe case of pneumonia and I have not yet fully recovered.

6. My oldest daughter, Loretta Jean was born with a congenital heart defect known to me as "blue baby" and she continues to receive outpatient care several times per month at Children's Hospital in Buffalo.

7. My male friend and I have lived together for about four years. During that period he has helped with housework, and preparing meals, and he has looked after the children when I have been ill or when I have to take one of my children on an errand. Mr. Ray and I intend to live together in the future, but we do not at this time, intend to marry.

8. Mr. Ray has supported himself by working at various jobs, generally as a janitor or general maintenance man. When Mr. Ray is working he generally pays for his own share of the household food budget. Mr. Ray also makes occasional gifts of clothing to my children; however, he does not appear willing or able to undertake actual support of me or any of my children.

9. Prior to November 1, 1972 my semi-monthly public assistance grant was $204.00; but thereafter the grant was reduced further because I received a notice dated December 6, 1972 from the Erie County Department of Social Services that my grant would be reduced to $174.60. See exhibit "A" administrative appeal. That reduction was delayed pending an administrative hearing was held on January 8, 1973 and at that time the agency revised the amount of reduction to $187.90 because Mr. Ray was unemployed and had no income whatever. In a fair hearing decision dated February

14, 1973 the Commissioner of the Department of Social Services affirmed the determination that my grant should be reduced to $187.90. See exhibit "C". Since our circumstances remain unchanged, I expect the reduction of assistance to be implemented shortly.

11. The health and welfare of my children and myself would be endangered if my public assistance grant is reduced. For example, the Erie County Department of Social Services has recently authorized me to retain ownership of a 1965 Ford station wagon on grounds that a car is essential to travel to and from medical providers, but no extra money is available to operate the car. Therefore my family's subsistence budget is already severely strained, and a reduction of assistance will simply mean less food for my children.

WHEREFORE, I respectfully pray this Court grant my motion to intervene and for a preliminary injunction.

(Sworn to by Loretta Clark, March 1973.)

Notice of Intent to Reduce Public Assistance, Exhibit "A" to Clark Affidavit.

ERIE COUNTY

DEPARTMENT OF SOCIAL SERVICES

Edward A. Rath County Office Building
95 Franklin Street
Buffalo, New York 14202

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE

Name of Recipient: Loretta Clark

Address: 249 Moselle St.
Buffalo, N.Y. 14211

Cat./Case No.: ADCU 274293

Date: 12/6/72

This is to advise you that this department intends to reduce your public assistance grant from $199.60 semi-monthly to $174.60 semi-monthly eff. 1/1/73 for the following reason(s):

Since Sidney Ray works part-time for the Council of Churches, but doesn't know ahead of time exactly when or how long he will be working, we will begin budgeting $50. per month income. If in any given month he does not earn that much, we will be able to send you a supplement, but only upon receipt of written verification of his actual hours worked and wages earned.

You may have a conference at this department to review your case at any time before the proposed date of reduction of your grant. To make an appointment, telephone 846-7541.

Notice of Intent to Reduce Public Assistance, Exhibit A to Clark Affidavit.

Dan Ross	12/6/72
Supervisor	Date

W. Chavous—IN 3

Right To Fair Hearing

If you believe that your assistance should not be reduced, you may request a state fair hearing by telephoning 842-4377 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why your assistance should not be reduced as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date your assistance is proposed to be reduced, you will continue to receive your assistance unchanged until the fair hearing decision is issued.

Decision After Fair Hearing, Exhibit "C" to Clark Affidavit.

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

LORETTA CLARK

from a determination by the Erie County Department of Social Services (hereinafter called the agency)

A fair hearing was held at 95 Franklin Street, Buffalo, New York, on January 8, 1973, before Alfred F. Cohen, Hearing Officer, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the reduction of a grant of aid to dependent children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant, age 38, has a household consisting of herself, five minor children, and a man who is unrelated.

(2) Appellant and her five minor children are currently recipients of aid to dependent children.

(3) On December 6, 1972, the agency determined to reduce appellant's recurring semi-monthly cash grant of assistance because an unrelated person was residing in the household.

(4) The man residing in appellant's household was unemployed and had not applied for nor was he receiving public assistance.

Decision After Fair Hearing, Exhibit "C" to Clark Affidavit.

(5) The agency recomputed appellant's semi-monthly budget effective January 1, 1973 as follows:

Basic allowance (6 persons)	$296.00
Rent (6/7 of $75.00)	64.29
Heat (6/7 of $18.20)	15.60
Total monthly needs	$375.89
Semi-monthly cash grant	$187.90

(6) The agency sent a Notice of Intent to reduce appellant's grant on December 6, 1972, to be effective January 1, 1973. The appellant requested a fair hearing to review the agency's proposed action on December 21, 1972. The agency was notified by the State Department of Social Services that appellant's grant must be continued without change until a fair hearing decision is issued. The agency has continued assistance unchanged to the appellant through the date of this hearing and the agency has stated that assistance will be continued until a fair hearing decision is issued.

The record clearly establishes that an unrelated person has been residing in appellant's household and has not applied for nor is he in receipt of public assistance.

Paragraph (d) of Section 352.30 of the Regulations of the State Department of Social Services provides as follows:

"A non-legally responsible relative or unrelated person in the household, who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the

lodger, the amount in excess of $15.00 per month shall be considered as income; for such boarding lodgers, the amount in excess of $60 per month shall be considered as income. In the event a lodger does not contribute at least $15.00 per month, the family's shelter allowance including fuel for heating, shall be a pro rata share of the regular shelter allowance."

As there was no evidence presented to establish that the unrelated person in appellant's household was contributing at least $15.00 per month, the agency correctly determined to prorate the family's shelter allowance including fuel for heating as provided in accordance with the aforecited section of the regulations.

Accordingly the agency properly determined to reduce appellant's recurring semi-monthly cash grant of assistance.

DECISION: The determination of the agency is affirmed.

DATED: Albany, New York, Feb 14 1973

ABE LEVINE
Abe Levine
COMMISSIONER

By CARMEN SHANG
Carmen Shang
ASSISTANT COMMISSIONER

Notice of Motion to Dismiss Amended Complaint or for Summary Judgment on Behalf of State Defendants.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the (amended) complaint verified on August 28, 1972, and filed herein, and upon all the papers, heretofore had herein, the illegible !!!! will move this Court, before Judge Arnold Bauman, at Room 705, United States Courthouse, Foley Square, New York, New York on the 9th day of March, 1973 at 9 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing the action on the respective grounds that the Court lacks jurisdiction over the subject matter and that the (amended) complaint fails to state a claim upon which relief can be granted.

PLEASE TAKE FURTHER NOTICE that the defendants demand in the alternative, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, that the Court grant a summary judgment in defendants' favor on the statutory and pendent claim alleged.

Dated: New York, New York, February 21, 1973.

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants

To: JERALD S. SLATE, Esq.
MARTIN A. SCHWARTZ, Esq.
Legal Aid Society of
Westchester County

Defendants' Statement Pursuant to General Rule 9-G of the Rules of the Southern District of New York and in Opposition to Plaintiffs' 9-G Statement.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendants, as and for their statement pursuant to General Rule 9-G of the Rules of the Southern District of New York and in opposition to plaintiffs' 9-G statemen', respectfully alleges:

1. Paragraph "1" to and inclusive of paragraph "8" are accepted as presenting material facts as to which there are no genuine issues to be tried.

2. Paragraph "9" is rejected and denied as not presenting material facts.

3. Defendants submit on their own behalf a new paragraph to provide as follows:

> "In the 'Decision After a Fair Hearing' the Acting State Commissioner Barry Van Lare further found that; 'the agency should have deducted $30 a month from the cost of shelter as has [the lodger's] pro rata share of rent. The determination of the agency is reversed. The agency is directed to recompute the appellant's grant for the months involved in accordance with the foregoing and to issue a grant in the

amount of the difference between what the appellant should have received, and that which she did receive' ".

Dated: New York, New York, March 5, 1973.

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants

GENE B. MECHANIC
Law Apprentice

Answer of County Defendant.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, LOUIS P. KURTIS, answering the Complaint herein by his Attorney, John J.S. Mead, respectfully alleges:

FIRST: Denies each and every allegation contained in Paragraph 14 of the Complaint except admits Plaintiff's friend was not under any legal obligation to provide financial support or assistance to the Plaintiff or her three children.

SECOND: Denies each and every allegation contained in Paragraph 20 of the Complaint except admits that Plaintiff's public assistance was reduced by $30 each month for a period of four months.

THIRD: Denies each and every allegation contained in Paragraph 21 of the Complaint except admits to the existence of the regulations cited therein.

FOURTH: Denies each and every allegation contained in Paragraph 24 of the Complaint.

FIFTH: Denies each and every allegation contained in Paragraphs 25, 26, 27 and 28 of the Complaint.

AS AND FOR AN AFFIRMATIVE DEFENSE TO THE COMPLAINT HEREIN, DEFENDANT LOUIS P. KURTIS ALLEGES

SIXTH: That the purpose of the regulations sought to be held unconstitutional is to assure the use of the monthly grant for the purposes for which granted, i.e., for food, clothing and shelter for the children and the Plaintiff.

SEVENTH: That the Plaintiff's insistance upon having a male friend residing with her and her children over a sustained period without contribution to the household results, in effect, in a dimunition of the childrens' grant for food, clothing and incidentals.

EIGHTH: That Plaintiff's allegation that the male friend does not contribute to the household needs is, in effect, an admission of her misuse of the children's grants for the purposes of supporting her male friend.

NINTH: Neither Defendant, Louis P. Kurtis, nor the regulations forbid Plaintiff to free association with her

male adult friend or any friends so long as such association does not result through residence of such friends in the lessening of the children's grant for food, clothing and incidentals.

TENTH: That the Plaintiff has the burden, because of the facts in each separate case, to establish that the male friend's continued presence in the home does not, in fact, result in a diminution of the children's grants for food, clothing and incidentals.

ELEVENTH: That the Defendant Louis P. Kurtis, has a statutory obligation to determine that a grant under the ADC Program is being used for the purposes for which it is intended under the Federal and State regulations.

WHEREFORE, Defendant, Louis P. Kurtis respectfully requests the Complaint be in all respects denied and such other and further relief as to the court may seem proper.

JOHN J.S. MEAD
County Attorney for the
County of Westchester
Attorney for Defendant

Regulatory History of 18 NYCRR §§ 352.30(d) and 352.31(a)(3)(iv) Submitted in Response to Notice to Produce Directed to State Defendants.

352.30 PERSONS INCLUDED IN THE BUDGET.

• • •

(c) A non-legally responsible relative in the household who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the lodger, the amount in excess of $15.00 per month shall be considered as income; for such boarding lodgers, the amount in excess of $60 per month shall be considered as income.

[Effective June 2, 1970]

• • •

Subdivision (c) of section 352.30 is hereby amended to read as follows:

(c) A non-legally responsible relative or unrelated person in the household, who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the lodger, the amount in excess of $15.00 per month shall be considered as income; for such boarding lodgers, the amount in excess of $60 per month shall be considered as income. In the event a lodger does not contribute at least $15 per month, the family's shelter allowance including fuel for heating, shall be a pro rata share of the regular shelter allowance.

Paragraph (3) of subdivision (a) of section 352.31 is hereby REPEALED and a new paragraph (3) is substituted in lieu thereof to read as follows:

(3) When a female applicant or recipient is living with a man to whom she is not married, other than on an occasional or transient basis, his available income and resources shall be applied in accordance with the following:

(i) When the man is willing to be considered as a spouse, his available income and resources shall be applied in determining eligibility and degree of need.

(ii) When the man is willing to assume responsibility only for his needs, the needs of the woman and those children for whom he is the acknowledged or adjudicated father, his available income or resources shall be applied in determining eligibility and degree of need of such persons only; and assistance for any remaining children shall be provided on a pro rata basis.

(iii) When the man is willing to assume responsibility only for his needs, and the needs of those children for whom he is the acknowledged or adjudicated father, his available income and resources shall be applied in determining eligibility and degree of need of such persons only; and assistance for the woman and remaining children shall be provided on a pro rata basis.

(iv) When the man is unwilling to assume responsibility for the woman or her children, and there are no children of which he is the acknowledged or adjudicated father, he shall be treated as a lodger in accordance with section 352.30(c).

(v) The foregoing shall not affect the responsibility of a man to provide support for children of which he is the acknowledged or adjudicated father, nor shall it relieve the social services official for his responsibility to initiate apropriate support proceedings.

[Effective August 31, 1970]

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to Primary History of 18 NYCRR §§ 352.30(d) and (3)(iv) Submitted in Response to Notice Produce Directed to State Defendants.

Subdivision (c) of section 352.30 is relettered to be subdivision (d) and a new subdivision (c) is added thereto to read as follows:

(c) When an applicant or recipient willfully fails or refuses to comply with the requirements of Part 385 of Department Regulations, his needs shall be excluded from consideration in determining the family members' needs. The appropriate recurring allowances shall be provided for the remaining family members in accordance with family size, as reduced, and circumstances.

Paragraph (2) of subdivision (a) of section 352.31 is hereby amended to read as follows:

(2) All available and unrestricted income of an applicant or recipient and of the spouse, if in the home, including support payments required to be made by a parent pursuant to an order of the family court or other appropriate court, shall be prorated and applied against the needs of the applicant, the spouse and the minor or children of either or both. The income of a legally responsible relative in the home who has been disqualified under Part 385 of Department Regulations shall be treated in like manner.

(i) Under exceptional circumstances other than disqualification under Department Regulations Part 385, a spouse who refuses to make application for assistance and to have his income so applied against the needs of his family, shall have his needs estimated as if he were applying for public assistance and his income applied first against his own needs and any surplus against the needs of his dependents.

[Effective August 26, 1971]

Opinion of District Judge Arnold Bauman.

[SAME TITLE]

BAUMAN, D. J.

Before the court is yet another action challenging the manner in which the State of New York allocates its welfare funds. Plaintiff and her three minor children receive public assistance pursuant to the Aid to Families with Dependent Children (AFDC) program. The action is brought on their behalf, and on behalf of all others similarly situated, to enjoin the enforcement of 18 N.Y.C.R.R. § 352.31 (a)(3)(iv)[1] and 18 N.Y.C.R.R. § 352.30(c) and (d)[2] and to secure retroactive public assistance payments of which she claims to have been unlawfully deprived.

The plaintiff has moved for class determination pursuant to Rule 23 of the Federal Rules. She also seeks summary judgment pursuant to Rule 56, and thereby, a permanent injunction against the enforcement of the attacked state regulations as well as retroactive welfare payments. Plaintiff argues that these regulations are violative of the due process and equal protection clauses of the Fourteenth Amendment and repugnant to the rights of privacy and freedom of association secured by the First, Ninth, and Fourteenth Amendments. She also contends that they are violative of the Supremacy Clause (Article VI) in that they conflict with the provisions of subchapter IV of the Social Security Act, 42 U.S.C. § 601 et seq. and the regulations promulgated thereunder. The defendants in turn have moved to dismiss the action pursuant to Rules 12(b)1 and 12(b)6 of the Federal Rules on the grounds that this court lacks subject matter jurisdiction and that the complaint fails to state a claim upon which relief can be granted. In addition, Phyllis D'Alessio and Loretta Clark, both mothers

receiving aid under the AFDC program, seek to intervene pursuant to Rule 24(b)(2). The defendants oppose their intervention.

I.

A brief exposition of Mrs. Hurley's situation may help illuminate the difficulty in which she and others in her purported class find themselves.[3]

Mrs. Hurley has been living apart from her husband since 1967 and claims not to have seen or heard from him since that time. From November, 1970 through February, 1971 a male who contributed nothing toward her maintenance or that of her three children lived with her. Her rent during that period was $150 per month. Upon learning of the presence of a male lodger, the Westchester County Department of Social Services, without explanation as to how the figure was reached, deducted $35 per month for the four months from plaintiff's recurring grant.

On November 12, 1970 plaintiff requested a State Fair Hearing which was held on March 22, 1971 in White Plains, New York. In a decision rendered September 20, 1971, Barry Van Lare, the Acting Commissioner of the Department of Social Services, upheld the grant reduction but ruled that the Westchester Department should have deducted $30 rather than $35 from her stipend.[4]

Plaintiff claims that she still wishes to associate and reside with this male friend, but is afraid to do so because of the anticipated reduction in her public assistance grant.

II.

I shall first consider plaintiff's motion that this be designated a class action pursuant to Rule 23(a)[5] and Rule 23(b)2[6] of the Federal Rules. The proposed class would consist of "all residents of the State of New York who are or were receiving public assistance, who have had their

grants reduced, terminated, suspended or denied, or who are threatened with reduction, termination, suspension or denial, solely because of the enforcement of 18 N.Y.C.R.R. § 352.31(a)(3)(iv) and § 352.30(c) and (d)."

It would appear that all of the requirements in the above cited rules have been met and that this may proceed as a class action. Plaintiff's efforts to demonstrate satisfaction of the numerosity requirement, Rule 23(a)1, have been thwarted in part by the state's failure to compile any statewide statistics on the number of recipients whose grants have been reduced because of the presence of lodgers.[7] However, the defendants did furnish statistics compiled by a research analyst in the State Department of Social Services indicating that as of November 1, 1972, there were 477 such cases in New York City. That figure alone would render the class so numerous that joinder would be impracticable, and it may reasonably be assumed that the total number in the state is far larger still.

Plaintiff's claims are typical and there can be no dispute that the questions of law or fact are common to the class. It has been frequently noted in similar cases that the state's promulgation of an unconstitutional regulation and/or its failure to comply with regulations of the Department of Health, Education, & Welfare affects all welfare recipients in the same manner. *Seritella* v. *Engelman,* 339 F.Supp. 738 (D.N.J. 1972); *Almenares* v. *Wyman,* 334 F.Supp. 512 (S.D.N.Y. 1971), affd., 453 F.2d 1075 (2nd Cir. 1971). For the purpose of determining the constitutionality of the challenge regulations, it does not matter that plaintiff and some members of the class have received Fair Hearings and others have not. The exhaustion of state administrative remedies is not a prerequisite to the maintenance of an action under 42 U.S.C. § 1983. *Sostre* v. *McGinnis,* 442 F.2d 178 (2nd Cir. 1971); *Carter* v. *Stanton,* 405 U.S. 669 (1972); *Damico* v. *California,* 389 U.S. 416 (1967). Accordingly, even where some of the named plaintiffs have

exhausted their administrative remedies, the class may nevertheless include others who have not. *Doe* v. *Lavine*, 347 F.Supp. 357 (S.D.N.Y. 1972); *Broussard* v. *Schlumberger Well Services*, 315 F. Supp. 506 (S.D.Tex. 1970); *Miller* v. *International Paper Co.*, 408 F.2d 283 (5th Cir. 1969). Hence such factual distinctions among members of the class have little bearing on the resolution of the central question presented by this action, namely, the constitutionality of the New York regulations.

I have no doubt that the representative party will fairly and adequately protect the interests of the class. The Legal Aid Society of Westchester County, which represents both Mrs. Hurley and Mrs. D'Alesio, one of the intervenors, has demonstrated a high standard of advocacy in both its written and oral presentations before this court, and I am certain that it will continue to do so.

Finally, it is also clear that the instant action is precisely of the type contemplated by Rule 23(b)2. The Advisory Committee Notes to Rule 23 with reference to this subsection point up its applicability:

> "This subdivision is intended to reach situations where a party has taken action or refused to take action with respect to a class and final relief of an injunctive nature, setting the legality of the behavior with respect to the class as a whole, is appropriate . . . Action or inaction is directed to a class within the meaning of this subsection even if it has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class.
>
> Illustrative are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration." (Citations omitted).

Examples of cases challenging state welfare laws in which class action status has been granted are legion. *Almenares* v. *Wyman, supra; Gaddis* v. *Wyman,* 304 F.Supp. 717 (S.D.N.Y. 1969); *James* v. *Goldberg,* 302 F.Supp. 478 (S.D.N.Y. 1969); *Doe* v. *Shapiro,* 302 F.Supp. 761 (D. Conn. 1969). The motion to designate the instant case a class action is therefore granted.

III.

I am also satisfied that this court has jurisdiction to entertain this action pursuant to 42 U.S.C. § 1983 and its jurisdictional complement, 28 U.S.C. § 1343(3). It is now well settled that jurisdiction exists under § 1343(3) only if the complaint presents a substantial constitutional question. *Almenares* v. *Wyman,* 453 F.2d 1075, 1082 (2nd Cir. 1971); *Merriweather* v. *Burson,* 439 F.2d 1092 (5th Cir. 1971). I therefore intend to review the plaintiff's constitutional arguments. The survey shall be brief because, as shall appear more fully below, it appears that the question presented by this case can be resolved on statutory grounds alone. I therefore need consider the substantiality, but not the substance of the constitutional claims.

Plaintiff makes four separate constitutional arguments. First, she urges that the regulations, by discouraging the presence of a male lodger, exert a chilling effect on her right to free association secured by the First and Fourteenth Amendments. See generally, *N.A.A.C.P.* v. *Alabama ex rel. Patterson,* 357 U.S. 449 (1958); *Bates* v. *City of Little Rock,* 361 U.S. 516 (1960); *Gibson* v. *Florida Legislative Investigation Committee,* 372 U.S. 539 (1963). Second, she argues that they violate her right of privacy and right to freedom from governmental intrusion into the home. *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Stanley* v. *Georgia,* 394 U.S. 557 (1969); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1972). Third, plaintiff contends that the assump-

tion implicit in the challenged regulations that a lodger will contribute his *pro rata* share of shelter costs constitutes a conclusive presumption in violation of the Due Process clause of the Fourteenth Amendment. *Carrington* v. *Rash,* 380 U.S. 89 (1965); *Stanley* v. *Illinois,* 405 U.S. 645 (1972); *Vlandis* v. *Kline,* —— U.S. —— (June 11, 1973); *United States Department of Agriculture* v. *Murry,* —— U.S. —— (June 25, 1973). Her final argument is that the regulations violate the equal protection clause of the Fourteenth Amendment by discriminating arbitrarily between two classes of equally needy families: those without a lodger, who receive a full welfare stipend, and those with whom a lodger resides, and whose stipend is accordingly reduced. See *Dandridge* v. *Williams,* 397 U.S. 471 (1970); *Jefferson* v. *Hackney,* 406 U.S. 435 (1972).

Without implying any judgment on the merits of the other three contentions,[8] I find that at least plaintiff's due process argument raises a substantial constitutional question. The Supreme Court has long held that "a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." *Heiner* v. *Donnan,* 285 U.S. 312 (1932). To cite one recent example, the Court in *Stanley* v. *Illinois,* supra, found unconstitutional an Illinois law which made illegitimate children the wards of the state upon the death of their mothers and which consequently presumed unmarried fathers to be unfit to raise such children. It concluded that, as a matter of due process, an unmarried father was entitled to a hearing on his fitness as a parent before being deprived of his children. The Court observed that Illinois "insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing . . ." 405 U.S. at 658.

In several recent cases courts have concluded that statutes similar to those at issue here created conclusive presumptions incapable of being contravened by a factual showing. In *Boucher* v. *Minter*, 349 F.Supp. 1240 (D.Mass. 1972), a three judge court struck down a provision of the Massachusetts AFDC program which reduced the shelter allowance to needy children upon the remarriage of their mother. The court held, inter alia, "[t]he irrebuttable presumption underlying the defendants' policy, namely, that after the mother's remarriage the children in the AFDC family do not need a shelter allowance and that household expenses will be paid by the stepfather is unrealistic and arbitrary." See also *Jenkins* v. *Georges*, 312 F.Supp. 289 (W.D.Pa. 1969); *Owens* v. *Parham*, 350 F.Supp. 598 (N.D. Ga. 1972); *Rosen* v. *Hursh*, 464 F.2d 731 (8th Cir. 1972).

Because 18 N.Y.C.R.R. § 352.31(a)(3)(iv) and §§ 352.30 (c) and (d) automatically prorate a family's shelter allowance upon the presence of a male, I conclude that plaintiff's contention that a conclusive presumption is thereby created in violation of the Due Process Clause presents a substantial constitutional question and is a sufficient predicate for jurisdiction under 28 U.S.C. § 1343(3). I wish to emphasize that I do not pass on the substance of this question, both because the issue can be resolved on narrower ground and because it would be improper for a single judge to do so. I find only that the plaintiff has adequately refuted defendants' contention that the constitutional arguments presented here are frivolous or a mere pretext for placing the statutory arguments before this court.

III.

Before turning to plaintiff's contention that the challenged New York regulations are inconsistent with regulations promulgated under the Social Security Act, two observations are in order. First, it is now established that

a suit to enjoin the enforcement of a state statute on the ground of its asserted repugnancy to a federal statute does not require the convening of a three judge court. *Swift and Company* v. *Wickham*, 382 U.S. 112 (1965); *Ex parte Buder*, 271 U.S. 461 (1926); *Ex parte Bransford*, 310 U.S. 354 (1940); *Case* v. *Bowles*, 327 U.S. 92 (1946). Second, where a court is presented with both constitutional and statutory claims, it is obliged to consider first the statutory claims. *Rosado* v. *Wyman*, 397 U.S. 397 (1970). I find myself in agreement with Judge Gurfein that "the most appropriate course for the district judge is to first face the statutory claim alone, since on it a three judge court is not required and since a three-judge court, if convened, would have to face it first." *Doe* v. *Lavine*, 347 F.Supp. 357 at 359-360 (S.D.N.Y. 1972). See also *Doe* v. *Gillman*, 347 F.Supp. 483 (N.D. Iowa 1972); *Sadler* v. *Winstead*, 327 F.Supp. 568 (N.D. Miss. 1971); *Connecticut Union of Welfare Employees* v. *White*, 55 F.R.D. 481 (D. Conn. 1972).

The AFDC program, 42 U.S.C. § 601 et seq., is one of three major categorical public assistance programs established by the Social Security Act of 1935. Its purpose is the encouragement of "the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services" to such children. 42 U.S.C. § 601. The dependent child is defined, at 42 U.S.C. § 606(a), as one "who has been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent."

§ 606(a) was first carefully scrutinized by the Supreme Court in *King* v. *Smith*, 392 U.S. 309 (1968). At issue there was an Alabama regulation denying AFDC assistance to the children of any mother (1) who lived with a man; (2) who was visited frequently by a man "for the purpose of cohabiting"; or (3) who cohabited with a man even outside

her children's home. Under the Alabama scheme it was irrelevant whether the man was legally obligated to support the children, and equally irrelevant whether he did in fact make any contribution toward their support. The State of Alabama argued before the Court that its regulation simply further refined the definition of "absent parent" under § 606(a); it further contended that its regulation significantly reduced the welfare caseload, discouraged sexual intercourse, and put "informal" families on the same footing as other families. The Court rejected all of these contentions. It found it "inconceivable . . . that Alabama is free to discourage immorality and illegitimacy by the device of absolute disqualification of needy children." It further concluded that "Congress intended the term 'parent' in . . . 42 U.S.C. § 606(a) to include only those persons with a legal duty of support." The Court there struck down Alabama's regulation because it defined "parent" in a manner inconsistent with the federal statute.

The Court's exegesis of § 606(a) in *King* v. *Smith* was codified in 45 C.F.R. § 203.1.[10] That provision defined "parent" in accordance with the Court's interpretation and further provided that in determining a child's financial eligibility, a State could consider "only such income as is actually available for current use on a regular basis." In *Lewis* v. *Martin*, 397 U.S. 552 (1970), the Court had occasion to consider these new regulations, and that decision has a readily apparent relevance for the instant case. That case presented a challenge to a California law providing that welfare payments to children who lived with their mother and stepfather "or an adult male person assuming the role of spouse" (MARS) shall be computed after consideration is given to the income of the stepfather or MARS. The Court noted (without explicitly adverting to the Due Process Clause of the Fourteenth Amendment) that this statute conclusively presumed that a child's needs were

reduced by the income available from the man in the house whether or not such income was used to meet these needs. It upheld 45 C.F.R. § 203.1 as a reasonable exercise of HEW's administrative judgment and held that "[i]n the absence of proof of actual contribution, California may not consider the child's 'resources' to include either the income of a non-adopting stepfather who is not legally obligated to support the child as is a natural parent, or the income of a MARS—whatever the nature of his obligation to support." 397 U.S. at 559-560. The *Lewis* case has frequently been invoked by lower federal courts to invalidate state statutes which reduce AFDC grants to reflect the support supposedly provided by a stepfather or "man in the house." *Rosen* v. *Hursh*, 464 F.2d 731 (8th Cir. 1972); *Gilliard* v. *Craig*, 331 F.Supp. 587 (W.D.N.C. 1971), affd, 409 U.S. 807 (1972); *Gaither* v. *Sterret*, 346 F.Supp. 1095 (N.D.Ind. 1972), affd., 409 U.S. 1070 (1972). See also, *Reyna* v. *Vowell*, 470 F.2d 494 (5th Cir. 1972); *Solman* v. *Shapiro*, 300 F.Supp. 409 (D.Conn. 1969), affd. 396 U.S. 5 (1969).

In the case at bar plaintiff argues that 18 N.Y.C.R.R. § 351(a)(3)(iv) and § 352.30(c) and (d) are inconsistent with 45 C.F.R. § 233.90. She claims that these statutes, by effecting a *pro rata* reduction in the rental stipend because of the presence of a lodger, conclusively presume that the lodger is contributing to the family's income, whether or not he can or does make such a contribution. Indeed, the hearing examiner's decision specifically included the following finding: "The record establishes that the man residing with appellant [Mrs. Hurley] was not willing to assume responsibility for the appellant or her children of which he is not the acknowledged or adjudicated father. In addition, no contribution is made by the lodger to the appellant." Plaintiff argues that the state statutes which effect a reduction in the rental stipend in disregard of such circumstances violate the policies enunciated in the *King* and *Lewis* decisions and embodied in 45 C.F.R. § 233.90.

Defendants, unable to distinguish those cases convincingly, offer but one argument in rebuttal. They contend that the only purpose of the challenged statutes is to prevent the allocation of AFDC funds to non-eligible persons. The regulations "merely pro rate the rent among the eligible persons and compute the shelter allowance accordingly, leaving the lodger and non eligible to pay his own way."[11] It would be unfair, the defendants imply, to permit a male lodger, who need not have qualified for public assistance, to share in the family's rental stipend. In order to prevent state subsidy of an ineligible recipient, the argument continues, the stipend must simply be reduced by the lodger's proportionate share.

I find the defendants' argument utterly unpersuasive and hold that the challenged regulations are inconsistent with 45 C.F.R. § 233.90. Despite the defendants' professed concern that ineligibles not receive a rental stipend, the inevitable result of these regulations is to reduce, perhaps drastically, the stipend for those who are eligible. In the case of a mother with one child for example, the presence of a non-contributing male lodger would reduce the rental stipend by 33⅓%. This devastating reduction means in practice that rental payments must be met out of that portion of the welfare stipend allotted for food and clothing.

The regulations thus conflict directly with § 233.90, a portion of which states: "[u]nder this requirement, the inclusion in the family, or the presence in the home, of a 'substitute parent', or 'man in the house', or any individual other than that described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availiability of income by the state." Despite the defendants' protestations to the contrary, a *pro rata* reduction does indeed assume that the male lodger will pay his own way, whether or not he actually does. That

is precisely the assumption found impermissible in *King* and *Lewis*.

It should also be noted that the regulations here under scrutiny are in one sense far cruder than were those at issue in *Lewis* v. *Martin, supra*. The California statutes at least took into account the income of the stepfather or MARS in computing the stipend payable to the family. The New York regulations reduce the rental stipend *regardless* of the lodger's income. Hence children who could qualify for a full stipend under the California plan (i.e., if the MARS in fact had no income) would have their rental stipend reduced under the New York scheme. The Supreme Court found the California regulations not calibrated carefully enough to consider income actually available to the child. These New York statutes, I find, are even less sensitive instruments.

This is not the first attempt by a state to reduce a shelter allowance on the theory that the cohabitation of eligibles and non-eligibles makes the state responsible for only a proportionate share of the rent. In *Boucher* v. *Minter*, noted at pages 8-9, supra, the Massachusetts statute operated similarly. The court there perceptively identified the fallacy in the reasoning of the statute:

> "Although she has become a member of her new husband's family, the mother remains the head of a family, distinct for purposes of AFDC, comprised of herself and her children and is no less logical a conduit for shelter payments for the children if they in fact remain in need. That family unit remains unchanged since the stepfather does not join it in law; and if he does not join it in fact, by economic participation in its expenses, there is no basis in law or fact for an irrebuttable presumption that the shelter needs of the children have not continued despite the remarriage."

That flaw inheres in the New York regulations as well. See also, *Jenkins* v. *Georges,* 312 F. Supp. 289 (W.D.Pa. 1969); *Owens* v. *Parham,* 350 F. Supp. 598 (N.D.Ga. 1972).

In conclusion, then, I find that 18 N.Y.C.R.R. § 352.31(a)(3)(iv) and § 352.30(e)(d) are inconsistent with 45 C.F.R. § 233.90 and thus violative of the Supremacy Clause of the Constitution. Accordingly, an appropriate injunction shall issue against their enforcement.

V.

Two matters only remain for resolution. The first is the motion by Phyllis D'Alessio and Loretta Clark to intervene pursuant to Rule 24(b)2 of the Federal Rules.[12] Little would be gained by setting forth the proposed intervenors' backgrounds, for they are in all relevant details similar to that of Mrs. Hurley. Both are mothers receiving AFDC payments who have lost contact with the fathers of their children, and both have lived or are now living with men with whom they wish to reside on a permanent basis. Mrs. Clark has already received a Fair Hearing and suffered a *pro rata* reduction in her stipend. Mrs. D'Alessio has merely been threatened with a reduction.

A motion under Rule 24(b)(2) is addressed to the discretion of the district court, *Lipsett* v. *United States,* 37 F.R.D. 549 (S.D.N.Y. 1965), appeal dismissed, 359 F.2d 956 (2nd Cir. 1966), and we are continually reminded that the rule should be liberally construed. *Peterson* v. *United States,* 41 F.R.D. 131 (D.Minn. 1966). However, I believe that the rule should be construed in accordance with its underlying purpose, which is the prevention of a multiplicity of lawsuits involving common questions of law or fact. *Reich* v. *Webb,* 336 F.2d 153 (9th Cir. 1964), cert. denied, 380 U.S. 915 (1965). That purpose is already satisfied where, as here, the proposed intervenors fall within a class action designation. Consequently, the liberality with which the

rule is customarily construed must give way to considerations of judicial economy and the avoidance of the confusion caused by multiple claimants. I have therefore concluded that where a suit has been designated a class action, admitting intervenors *who raise no new issues* and who fall within the class merely clutters the action unnecessarily.[13] See *Allen Calculators, Inc.* v. *National Cash Register Co.*, 322 U.S. 137 (1944). I understand Rule 23(d) at least to suggest that to intervene in a class action, applicants must show more than mere identity of questions of fact and law. Were that provision construed otherwise, it would mean that any member of the class, *ipso facto*, has a right to intervene and litigate the action fully. Such a construction would render class actions just as unmanageable as some are wont to fear them.[14]

I have concluded that the proposed intervenors here have not made a showing sufficient to justify their intervention; they have done nothing more than demonstrate factual and legal claims in common with the class. There is no danger that the case will become moot as to the named plaintiff, a circumstance which has been found to justify intervention. *Gaddis* v. *Wyman*, 304 F.Supp. 713 (S.D.N.Y. 1969). Nor is there any contention that the proposed intervenors' interests will be prejudiced or impaired by inadequate representation on the part of the named plaintiff. *Rolle* v. *New York City Housing Authority*, 294 F.Supp. 574 (S.D.N.Y. 1969); *Gabriel* v. *Standard Fruit & S.S. Co.*, 448 F.2d 724 (5th Cir. 1971). There was but one factor weighing in favor of their intervention. Both Mrs. Clark and Mrs. D'Alessio, because they were confronted with the imminent loss of welfare benefits, sought preliminary injunctions. Mrs. Hurley, who had formerly suffered a reduction but was now receiving her full stipend, did not. At oral argument, however, the representative of the Attorney General's office agreed that the stipends of the

proposed intervenors would not be reduced during the pendency of this motion. Their motions for preliminary injunctions were accordingly deemed withdrawn. Had the Attorney General not thus graciously acceded to this court's request, the intervention of the two additional parties would have served a legitimate need in protecting the interests of that portion of the class facing an immediate loss of benefits. In the present posture of the case, the presence of the intervenors serves no discernible purpose, and their application to intervene is accordingly denied.

VI.

In addition to injunctive relief, plaintiff has also sought an order allowing her retroactive welfare payments for the months in which her stipend was improperly reduced. The question of retroactive welfare benefits is, at the moment, an unusually delicate one for the district judges of this Circuit. In *Rothstein* v. *Wyman,* 467 F.2d 226 (2nd Cir. 1972), cert. denied, 411 U.S. 921 (1973), our Court of Appeals, following *Ford Motor Co.* v. *Department of the Treasury of Indiana,* 323 U.S. 459 (1945), held that the Eleventh Amendment foreclosed a court from directing the retroactive payment of public assistance benefits. This view has its adherents. See *Westberry* v. *Fisher,* 309 F. Supp. 12 (D.Me. 1970); *Francis* v. *Davidson,* 340 F.Supp. 351 (D.Md. 1972); *Boucher* v. *Minter,* supra, at fn. 6.

On the other hand, four different three judge courts have granted the payment of retroactive benefits, and each of those decisions was affirmed summarily by the Supreme Court. *Gaddis* v. *Wyman,* 304 F. Supp. 717 (S.D.N.Y. 1969), affd. sub nom. *Wyman* v. *Bowens,* 397 U.S. 49 (1970); *Shapiro* v. *Thompson,* 270 F. Supp. 331 (D.Conn. 1967), affd., 394 U.S. 618 (1969); *Zarate* v. *State Dept. of Health and Rehabilitative Services,* 347 F. Supp. 1004

(S.D. Fla. 1971), affd., 407 U.S. 918 (1972); *Sterrett* v. *Mothers and Childrens Rights Organization* —— F. Supp. —— (N.D. Ind. 1972), affd., 409 U.S. 809 (1972). The *Gaddis* and *Shapiro* decisions antedated the Second Circuit's decision in *Rothstein* but the court did not regard them as binding precedents on the Eleventh Amendment question. Rather, Judge McGowan, speaking for the court, stated that the Supreme Court had not "as yet addressed itself specifically and authoritatively to this issue." Given this view of the value of the summary affirmance, it is unlikely that the decision of the Court of Appeals would have been in any way altered by the affirmances in *Zarate* and *Sterrett*.

It is generally thought that a summary affirmance is a decision on the merits having precedential value. See *Cincinnati, New Orleans & Texas Pacific Ry. Co.* v. *United States*, 400 U.S. 932 (1970) (White, J., dissenting); *Barton* v. *Sentner*, 353 U.S. 963 (1957) (Burton and Clark, J.J., dissenting); *United States ex rel. Fein* v. *Deegan*, 410 F.2d 13 (2nd Cir.), cert. denied, 395 U.S. 935 (1969); *Doe* v. *Hodgson*, 344 F. Supp. 964 (S.D.N.Y. 1972), affd., 478 F. 2d 537 (2nd Cir. 1973); Stern and Gressman, *Supreme Court Practice* 197 (4th ed. 1969). Nevertheless, the *Rothstein* court was obviously aware that the Eleventh Amendment defense had not been considered at length by the district courts in *Gaddis* and *Shapiro* (nor was it in *Zarate* or *Sterrett*). The court may then have concluded that, even though the question of retroactive benefits had technically been before the Supreme Court in those cases, the new gloss placed on the problem by the Eleventh Amendment defense had not. Of course, if the import of the court's remark that the Supreme Court "has not yet come to grips" with the question be taken literally, it suggests that a summary affirmance has no precedential value whatever. See *Dillenburg* v. *Kramer*, 469 F.2d 1222 (9th Cir. 1972).

The matter now however appears ripe for determination by the Supreme Court. In *Jordan* v. *Weaver*, 472 F.2d 985 (7th Cir. 1973) the Seventh Circuit concluded (a) that the prior Supreme Court affirmances were entitled to full precedential force; (b) that at all events, the Eleventh Amendment is no bar to the payment of retroactive benefits; and (c) that even if the Eleventh Amendment was a bar, Illinois had "constructively consented" to such actions. The Supreme Court has granted certiorari —— U.S. ——, 41 USLW 3644 (June 12, 1973) and obviously will address the problem in the coming term.

Meanwhile, however, as a district judge I consider myself bound both by the Second Circuit's construction of the Eleventh Amendment and by its view of the precedential force of the various summary affirmances. Although suits by welfare recipients are numerous, the question of the Eleventh Amendment as a defense to the payment of retroactive benefits has been treated but rarely. I therefore regard the *Rothstein* decision as authoritative and accordingly deny plaintiff's motion for the payment of such benefits here.

In conclusion, plaintiff's motion that this proceed as a class action is granted. Plaintiff's motion for summary judgment is granted to the extent that an injunction shall issue permanently enjoining the enforcement of 18 N.Y.C.R.R. § 352.31(a)(3)(iv) and § 352.30(c) and (d). Plaintiff's motion is denied to the extent that it seeks an order directing the payment of retroactive welfare payments, and that portion of the complaint is dismissed. Defendants motion to dismiss for failure to state a cause of action is denied, as is its alternative motion for summary judgment. The motions of Clark and D'Alessio to intervene are also denied.

Opinion of District Judge Arnold Bauman.

The parties are directed to settle an order on notice providing for an appropriate form of injunctive relief.

Dated: October 3, 1973.

ARNOLD BAUMAN
U.S.D.J.

FOOTNOTES

[1] 18 N.Y.C.R.R. § 352.31(a)(3)(iv):

"§ 352.31 *Estimate of need and application of income*

(a) For applicant or recipient.

• • •

(3) When a female applicant or recipient is living with a man to whom she is not married, other than on an occasional or transient basis, his available income and resources shall be applied in accordance with the following:

• • •

(iv) When the man is unwilling to assume responsibility for the women or her children, and there are no children of which he is the acknowledged or adjudicated father, he shall be treated as a lodger in accordance with section 352.30(c)."

The reference to § 352.30(c) is erroneous; it is clear from the text of the section, set out at footnote 2, infra, that the reference should be to § 352.30(d).

[2] 18 N.Y.C.R.R. § 35230 *Persons included in the budget*

"(c) When an applicant or recipient wilfully fails or refuses to comply with the requirements of Part 385 of this Title, the needs of the family shall be determined as if he were a member of the family, however, the grant shall be provided on a pro rata basis for the eligible family members only.

(d) A non-legally responsible relative or unrelated person in the household, who is not applying for non receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the lodger, the amount in excess of $15 per month shall be considered as income; for such boarding lodgers, the amount in excess of $60 per month shall be considered as income. In the event a lodger does

not contribute at least $15 per month, the family's shelter allowance including fuel for heating, shall be a pro rata share of the regular shelter allowance."

[3] The ensuing account is adopted from plaintiff's statement submitted pursuant to Rule 9-G of the Southern District Rules in support of her motion for summary judgment. With one unimportant exception, none of the facts in that statement is disputed by the defendants.

[4] This computation was reached in accordance with the controverted state regulations, cited at footnotes 1 and 2, which provide that if a male lodger does not contribute at least $15 per month, the family shelter allowance shall be reduced by the lodger's *pro rata* share. The previous shelter allowance had been $150, and thus the male lodger's *pro rata* share was 1/5 x $150 or $30.

[5] Rule 23(a):

"(a) *Prerequisites to a Class Action.* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

[6] Rule 23(b)(2):

"(b) *Class Actions Maintainable.* An action may be maintained as a class action if the prerequisites of subdivison (a) are satisfied, and in addition:

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or"

[7] See the letter of Judith A. Gordon, Assistant Attorney General, to Jerold S. Slate of the Legal Aid Society of Westchester County, appended as Exhibit C to the Slate affidavits.

[8] From his concurring opinion in *United States Department of Agriculture* v. *Moreno*, —— U.S. at —— (June 25, 1973), it is apparent that Mr. Justice Douglas would regard the arguments based on privacy and freedom of association as substantial. In considering § 3(e) of the Food Stamp Act of 1964, 7 U.S.C. § 2012(e), which excludes from participation in the food stamp program any household containing an individual unrelated to any other member of that household, he observed: "[t]he right of

association, the right to invite the stranger into one's home is too basic in our constitutional regime to deal with roughshod." The majority found the statute violative of the Due Process Clause of the Fifth Amendment and therefore did not reach these questions. See, however, the opinion of Judge McGowan for the three judge court below, *Moreno* v. *United States Department of Agriculture*, 345 F.Supp. 310 at 314 (D.D.C. 1972).

[9] 42 U.S.C. § 606(a) reads in full as follows:

"(a) The term 'dependent child' means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, step father, stepmother, stepbrother, stepsister uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;"

[10] 45 C.F.R. § 203.1 is set out in substance in *Lewis* v. *Martin*, 397 U.S. 552 (1970) at p. 556. It has been succeeded by 45 C.F.R. § 233.90(a), which incorporates its predecessor with relatively few changes. § 233.90(a) reads as follows:

(a) *State plan requirement.* A State plan under title IV-A of the Social Security Act must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to the child's step-parent who is ceremonially married to the child's natural or adoptive parent, and is legally obligated to support the child under State law or general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. In establishing financial eligibility and the amount of the assistance payment,

only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in home, of a 'substitute parent' or 'man-in-the-house' or any only such net income as is actually available for current use the absence of proof of actual contributions."

[12] Rules 14(b):

"(b) *Permissive Intervention.* Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

[13] By the same reasoning, permissive intervention is most appropriate where the court has determined a case unsuitable for class action treatment. Thus in *Doe* v. *Lavine*, 347 F.Supp. 357 (S.D.N.Y. 1972), Judge Gurfein granted motions to intervene by eight persons while finding that factual discrepancies precluded a class action designation. Similarly, Judge Mansfield in *Boone* v. *Wyman*, 295 F.Supp. 114 (S.D.N.Y. 1969), affd., 412 F.2d 857 (2nd Cir. 1969), cert. denied, 396 U.S. 1024 (1970), permitted intervention under Rule 24(b)2 but expressed doubt as to whether the prerequisites for a class action existed.

[14] Some courts have permitted intervention in class actions by applicants raising the same issues, and retaining the same attorneys, as the named plaintiffs. *Epstein* v. *Weiss*, 50 F.R.D. 387 (E.D.La. 1970), *Hicks* v. *Crown Zellerbach*, 49 F.R.D. 184 (E.D.La. 1968). The underlying rationale there appears to be that in such circumstances it hardly makes any difference whether intervention is permitted or denied.

[15] *Shapiro* v. *Thompson* was not, of course, a summary affirmance. But the Court made no mention of retroactive welfare benefits in its opinion, which can thus be deemed a summary affirmance on that point.

Judgment and Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

This cause having come on to be heard on plaintiffs' motion for a class action determination pursuant to Rule 23 of the Federal Rules of Civil Procedure and for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the motions to intervene as a party plaintiff on behalf of Phyllis D'Alessio and Loretta Clark pursuant to Rule 24 of the Federal Rules of Civil Procedure and on the motions for a preliminary injunction and a class action determination on behalf of the proposed intervenors, and on defendants' motion to dismiss the action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure or in the alternative for summary judgment, and the Court having considered the pleadings in the action, the affidavits, deposition and memoranda of law submitted by the parties herein, and the Court having heard oral argument, and due deliberation having been had thereon, and upon filing the opinion of the Court dated and filed the 3rd day of October, 1973, it is hereby

ORDERED, that defendants' motions to dismiss the action or in the alternative for summary judgment be and the same hereby are denied; and it is further

ORDERED, that the motions to intervene as party plaintiffs on behalf of Phyllis D'Alessio and Loretta Clark be and the same hereby are denied; and it is further

ORDERED, that the above-entitled action is maintainable as a class action pursuant to Rule 23 of the Federal Rules

of Civil Procedure. The class of plaintiffs consists of all residents of the State of New York who are or were or will be receiving public assistance, and who have had their grants of public assistance reduced, terminated, suspended or denied, or who are or may be threatened with reduction, termination, suspension, or denial of public assistance, solely because of the presence of a lodger in the home pursuant to 18 NYCRR §§ 352.31(a)(3)(iv) and 352.30(c) and (d); and it is further

ORDERED, that plaintiffs' motion for summary judgment be the same is granted to the extent hereinafter set forth; and it is further

ORDERED, that defendants, their officers, agents, servants, employees, and successors be and hereby are permanently enjoined from enforcing 18 NYCRR §§ 352.31(a)(3)(iv) and 352.30(c) and (d); and it is further

ORDERED, that plaintiffs' motion for a summary judgment be and the same hereby is denied to the extent it seeks an order directing the payment of retroactive welfare payments; and it is further

ADJUDGED AND DECREED, that plaintiffs are entitled to and are hereby granted a declaratory judgment in this action that 18 NYCRR §§ 352.31(a)(3)(iv) and 352.30(c) and (d) violate the federal Social Security Act, 42 U.S.C. § 601, et seq. and the regulation promulgated pursuant thereto by the Department of Health, Education and Welfare, 45 C.F.R. § 233.90; and it is further

ORDERED, that execution of this order is stayed pending a timely appeal by defendants to the Court of Appeals, Second Circuit, at which time this stay will continue pend-

ing final disposition of any or all appeals taken herein; AB ~~provided that this stay does not include proposed intervenors Phyllis D'Alessio and Loretta Clark.~~

Dated: New York, New York October 11, 1973.

HONORABLE ARNOLD BAUMAN
United States District Judge

Judgment Entered Oct. 16, 1973.
RAYMOND F. BURGHARDT
Clerk

Amended Judgment and Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

This cause having come on to be heard on plaintiffs' motion for a class action determination pursuant to Rule 23 of the Federal Rules of Civil Procedure and for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the motions to intervene as a party plaintiff on behalf of Phyllis D'Alessio and Loretta Clark pursuant to Rule 24 of the Federal Rules of Civil Procedure and on the motions for a preliminary injunction and a class action determination on behalf of the proposed intervenors, and on defendants' motion to dismiss the action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure or in the alternative for summary judgment, and the Court having considered the pleadings in the action, the affidavits, deposition, and memoranda of law submitted by the parties herein, and the Court having heard oral argument, and due deliberation having been had thereon, and upon filing the opinion of the Court dated and filed the 3rd day of October 3, 1973, and defendants having called this Court's attention to errors appearing in the original Judgment and Order entered on October 16, 1973, it is

ORDERED, that this Amended Judgment and Order shall supersede for all purposes the Judgment and Order entered on October 16, 1973; and it is further

ORDERED, that defendants' motions to dismiss the action or in the alternative for summary judgment be and the same hereby are denied; and it is further

ORDERED, that the motions to intervene as party plaintiffs on behalf of Phyllis D'Alessio and Loretta Clark be and the same hereby are denied; and it is further

ORDERED, that the above-entitled action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class of plaintiffs consists of all residents of the State of New York who are or were or will be receiving public assistance, and who have had their grants of public assistance reduced, terminated, suspended or denied, or who are or may be threatened with reduction, termination, suspension, or denial of public assistance, solely because of the presence of a non-contributing lodger in the home pursuant to 18 NYCRR §§ 352.31(a)(3)(iv) and 352.30(d); and it is further

ORDERED, that plaintiffs' motion for summary judgment be the same is granted to the extent hereinafter set forth; and it is further

ORDERED, that defendants, their officers, agents, servants, employees, and successors be and hereby are permanently enjoined from enforcing that portion of 18 NYCRR § 352.30(d) to the extent that it provides that when a non-legally responsible person who is neither applying for nor receiving public assistance resides in a household with public assistance recipients and does not contribute at least $15 monthly; the public assistance family's shelter allowance, including fuel for heating shall be a pro rata share of the regular shelter allowance and 18 NYCRR § 352.31(a)(3)(iv) insofar as it authorizes treatment of a non-legally responsible male residing with a woman and child or children receiving public assistance and who is unwilling to assume any responsibility for the support of said woman or child or children as a non-contributing lodger under § 352.30(d); and it is further

Amended Judgment and Order.

ORDERED, that plaintiffs' motion for a summary judgment be and the same hereby is denied to the extent it seeks an order directing the payment of retroactive welfare payments; and it is further

ADJUDGED AND DECREED that plaintiffs are entitled to and are hereby granted a declaratory judgment in this action that the portion of 18 NYCRR § 352.30(d) hereinbefore described and 18 NYCRR § 353.31(a)(3)(iv) to the extent it authorizes treatment of a non-legally responsible male who is unwilling to assume responsibility for support as a non-contributing lodger under § 352.30(d) violate the Federal Social Security Act, 42 U.S.C. § 601, et seq. and the regulation promulgated pursuant thereto by the Department of Health, Education and Welfare, 45 C.F.R. § 233.90; and it is further

ORDERED, that execution of this order is stayed pending a timely appeal by defendants to the Court of Appeals, Second Circuit, at which time this stay will continue pending final disposition of any or all appeals taken herein.

Dated: New York, New York, December 17, 1973.

HONORABLE ARNOLD BAUMAN
United States District Judge

Judgment entered Dec. 18, 1973.

RAYMOND F. BURGHARDT
Clerk

Plaintiffs' Notice of Appeal to the Court of Appeals for the Second Circuit.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Notice is hereby given that Rose Hurley, on her own behalf and on behalf of her minor children Doreen Hurley, Jamie Hurley, and John Hurley, and on behalf of all others similarly situated, the plaintiffs in the above entitled action, and Phyliss D'Alessio, the proposed plaintiff-intervenor, hereby appeal to the United States Court of Appeals for the Second Circuit from that part of the final judgment and order of the United States District Court for the Southern District of New York entered in this action on the 15th day of October, 1973, denying plaintiffs' motion for summary judgment to the extent it sought an order directing defendants to pay retroactive welfare payments and to the extent it denies the motion of Phyliss D'Alessio to intervene as a party plaintiff.

Dated: October 29, 1973, White Plains, New York.

MARTIN A. SCHWARTZ
THE LEGAL AID SOCIETY OF WESTCHESTER COUNTY

By: Martin A. Schwartz, of Counsel
Lawrence S. Kahn, of Counsel
Attorneys for Plaintiffs

To: Honorable Louis J. Lefkowitz
Attorney General of the State of New York
Attn: Judith Gordon, Esq.

Honorable John J. S. Mead
County Attorney

State Defendants' Notice of Appeal to the Court of Appeals for the Second Circuit.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Notice is hereby given that the defendants Barry Van Lare and Abe Lavine hereby appeal to the United States Court of Appeals for the Second Circuit from that part of the final order and judgment of Honorable Arnold Bauman, United States District Judge for the United States District Court of the Southern District of New York, which grants plaintiffs' motion for a class action, permanently enjoining defendants from enforcing 18 NYCRR §§ 352.31 (a)(3)(iv) and 352.30(c) and (d), declares that said regulations violate the federal Social Security Act, 42 U.S.C. § 601, *et seq.* and 45 C.F.R. § 233.90, regulations promulgated thereunder, and denies the defendants' motion to dismiss the action or in the alternative for summary judgment in defendants' favor.

The order was entered on or about October 15, 1973.

Dated: New York, New York, October 25, 1973.

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
GENE B. MECHANIC
Deputy Assistant Attorney
General

TO: MARTIN SCHWARTZ, Esq.
The Legal Aid Society of
Westchester County

JOHN J. S. MEAD, Esq.
County Attorney

County Defendants' Notice of Appeal to the Court of Appeals for the Second Circuit.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Notice is hereby given that the defendant, Louis A. Kurtis, hereby appeals to the United States Court of Appeals for the Second Circuit from that part of the final order and judgment of Honorable Arnold Bauman, United States District Judge for the United States District Court of the Southern District of New York, which grants plaintiffs' motion for a class action, permanently enjoins defendant from enforcing 18 NYCRR §§ 352.31(a)(3)(iv) and 352.30(c) and (d), declares that said regulations violate the federal Social Security Act, 42 U.S.C. § 601, et seq. and 45 C.F.R. § 233.90, regulations promulgated thereunder, and denies the defendant's motion to dismiss the action or in the alternative for summary judgment in defendant's favor.

The order was entered on or about October 15, 1973.

Dated: White Plains, N.Y., October 30, 1973.

Yours, etc.,

HARRY LOTT,
County Attorney of the
County of Westchester
Attorney for Defendant Kurtis

By
Richard W. McAtamney,
Sr. Asst. County Attorney

County Defendants' Notice of Appeal to the Court of Appeals for the Second Circuit.

To: Louis J. Lefkowitz
Attorney General of the
State of New York

Attn: Gene B. Mechanic, Esq.
Martin Schwartz, Esq.
The Legal Aid Society of
Westchester County

PROCEEDINGS BEFORE THE SINGLE DISTRICT JUDGE IN *TAYLOR* v. *LAVINE*, 73 Civ. 699, E.D.N.Y.

Complaint.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

CLASS ACTION
73 Civ.

ANNIE TAYLOR, individually and on behalf of her minor dependent child, MARGARET TAYLOR; CHARLOTTE OTEY, individually and on behalf of her minor dependent child, KEVIN OTEY, and on behalf of all other persons similarly situated,

Plaintiffs,

against

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services, and JAMES M. SHUART, individually and in his capacity as Commissioner of the Nassau County Department of Social Services,

Defendants.

I

PRELIMINARY STATEMENT

Plaintiffs, individually and on behalf of their minor dependent children and on behalf of all persons similarly situated, seek to have this court restore plaintiffs' rights which were abrogated, denied and deprived by defendants' enforcement of Section 352.30(d) of the Regulations of the State Department of Social Services (18 N.Y.C.R.R. 352.30(d)) and to have this court declare invalid and unconstitutional and enjoin the aforecited regulation and

award retroactive benefits to all members of the class who have been aggrieved by the enforcement of this regulation. The regulation treats a nonlegally responsible relative or unrelated person living with public assistance recipients and having no legal responsibility for their support as a lodger and thereby causes a reduction or elimination of the public assistance grant despite the fact that the "lodger" contributes no money to the household. The regulation is challenged on the ground that it is in conflict with the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and subchapter IV of the Social Security Act, 42 USC § 601 *et seq.*, and regulations promulgated thereunder by the United States Department of Health, Education and Welfare.

II

Jurisdiction

1. Jurisdiction is conferred on this Court by 28 U.S.C. 1343(3) and (4) which provide for original jurisdiction in Federal District courts for all suits authorized by 42 U.S.C. § 1983 to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress without regard to the amount in controversy.

2. Plaintiffs' action for declaratory and injunctive relief, and for retroactive rights to public assistance is authorized by:

(a) 28 U.S.C. § 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments.

(b) 48 U.S.C. § 1983, which provides for redress for the deprivation under color of law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.

III

PLAINTIFFS

3. The named plainiffs, Annie Taylor and Charlotte Otey, are citizens of the United States and of the State of New York. They are residents of the Village of Freeport, County of Nassau, State of New York. Plaintiff, Annie Taylor, is 28 years of age and is the mother of one minor child, Margaret Taylor, 6 years of age. Plaintiff, Charlotte Otey, is 47 years of age and is the mother of one minor child, Kevin Otey, 13 years of age.

4. The plaintiffs, Margaret Taylor and Kevin Otey, are the minor dependent children of plaintiffs, Annie Taylor and Charlotte Otey, respectively. They are included in their respective mothers' public assistance grants pursuant to the federal categorical program of Aid to Families with Dependent Children.

IV

CLASS ACTION

5. The named plaintiffs bring this action individually on their own behalf and on behalf of their respective minor dependent children and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. The members of the class similarly situated are all residents of New York State who are or were receiving public assistance in New York and who have

had their grants reduced, terminated, suspended or denied, or who are threatened with reduction, termination, suspension or denial solely because of the enforcement of Section 352.30(d) of the Regulations of the New York State Department of Social Services (18 N.Y.C.R.R. 352.30(d)).

6. The requirements of Rule 23(a) of the Federal Rules of Civil Procedure are complied with because:

(a) The class is so numerous that joinder of all members is impractical;

(b) There is a question of law common to the class, i.e., the validity of 18 N.Y.C.R.R. 352.30(d);

(c) The claims of the named plaintiffs are typical of the claims of the class;

(d) The named plaintiffs will fairly and adequately protect the interests of the class; and

(e) The named parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and declaratory relief with respect to the class as a whole.

In addition, there are questions of law and fact common to the members of the class which predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

V

Defendants

7. Defendant, Abe Lavine, as Commissioner of the New York State Department of Social Services, has primary responsibility for the administration of public assistance programs throughout the State of New York, in accordance

with the requirements of the United States Constitution, the Social Security Act, the Rules and Regulations of the Department of Health, Education and Welfare, the New York Social Services Law, and the Rules and Regulations promulgated by New York State Board of Social Welfare and Department of Social Services. He is being sued individually and in his official capacity.

8. Defendant, James M. Shuart, as Commissioner of the Nassau County Department of Social Services is mandated to administer the program of public assistance and care for which the Nassau County public welfare district is responsible and to exercise general supervision and care of persons in need in Nassau County pursuant to Section 65 of the New York State Social Services Law. He is being sued individually and in his official capacity.

VI

Factual Allegations

A. *Plaintiff Taylor*

9. Plaintiff Taylor and her minor child reside together in Freeport, New York at 168 North Main Street. They are recipients of public assistance in the federal-state AFDC program.

10. Plaintiff's sister, Virginia Taylor, age 23, also resides in the household. Prior to January 1, 1973, Virginia Taylor was receiving public assistance in the state home relief program.

11. In accordance with a written lease entered into in or about December, 1970, plaintiff Taylor is obligated to pay a monthly rental of $180.00 for the apartment in which she resides with her daughter and her sister.

12. Prior to January 1, 1973, the basic needs grants for plaintiff Taylor and her sister were based on the state-wide standard of needs for a household of three persons, with plaintiff Taylor receiving a monthly grant equivalent to two-thirds, and her sister receiving one-third, both grants reduced by a 10% state-wide rateable reduction. According to Sec. 131-a of the New York State Social Services Law, the basic needs grant is supposed to cover all recurrent items of need exclusive of shelter and fuel.

13. A shelter schedule promulgated by the Nassau County Department of Social Services, effective July 1, 1970, and filed with the New York State Department of Social Services, sets the maximum rent allowance for an apartment (with heat provided) at $145.00 for a household of one or two persons and $165.00 for three persons.

14. Pursuant to the said shelter schedule, plaintiff Taylor receives a rent allowance equivalent to ⅔ of $165.00 or $110.00. Prior to January, 1973, plaintiff's sister received a shelter allowance equivalent to ⅓ of $165.00 or $55.00. The remaining $15.00 of the monthly rental was made up from their respective basic needs grants.

15. During the months of January and February, 1973, plaintiff's sister neither received public assistance nor any other form of income. She therefore was unable and in fact did not contribute any money to the plaintiff.

16. In or about January, 1973, plaintiff requested that the Nassau County Department of Social Services provide her with a grant equivalent to the difference between a budget for two-thirds of a household of three, and a budget for a household of 2 persons. This request was approved with respect to the basic needs for plaintiff and

her daughter for the months of January and February, but not with respect to the shelter needs.

17. On February 26, 1973, plaintiff requested a state fair hearing to appeal the denial of her request for a full shelter allowance for two persons in accordance with the maximum shelter schedule, for the months beginning January, 1973.

18. A hearing was held in Mineola, New York on March 14, 1973, before a Hearing Officer designated by defendant Lavine. At the hearing, the representative of defendant Shuart did not dispute plaintiff's contention that she was receiving no money from her sister.

19. In a decision dated April 20, 1973, defendant Lavine affirmed the determination of the Nassau County Department of Social Services to allow plaintiff only $110 per month for rent on the grounds that this was in accordance with 18 N.Y.C.R.R. 352.30(d). This decision is attached hereto and made a part hereof as Exhibit A.

20. Plaintiff's sister was restored to public assistance in the federal pre-AD (presumptively Aid to the Disabled) category effective March 14, 1973. However plaintiff and her minor child continue to suffer grave and irreparable harm, injury, loss and damage through the lack of adequate funds to purchase necessities requisite for a minimum standard of living and health. Because of the two month period in which she did not receive a full shelter allowance, plaintiff is currently behind in her rent payments, thus requiring her to bear the added cost of late charges assessed in accordance with the terms of her lease. On March 23, 1973, there was a final judgment awarded in favor of plaintiff's landlord for non-payment of the balance of March rent. During the period in which the

warrant of eviction was stayed, plaintiff used money from her April grant to pay her landlord and nullify the proceeding.

B. *Plaintiff Otey*

21. Plaintiff Otey and her minor child reside together in Freeport, New York at 303 Waverly Place. They are recipients of public assistance in the federal-state AFDC program.

22. Plaintiff's adult son, Michael Otey, age 23, resides in the apartment. At all times hereinafter mentioned, Michael was unemployed, except for an occasional temporary job.

23. For some months prior to October, 1972, Michael Otey was not residing in plaintiff's household. During that period, plaintiff was receiving a maximum shelter allowance for two persons of $145.00. This was sufficient to pay her actual rent of $145.00.

24. In or about October, 1972, Michael Otey returned to live in plaintiff's apartment. Plaintiff thereupon received a notice from the Nassau County Department of Social Services, dated October 26, 1972, stating that plaintiff's public assistance grant was to be reduced for the following reason: "You must share shelter with your son, Michael Otey. Your share of shelter is $96.65."

25. On November 8, 1972, prior to the effective date of the proposed reduction, plaintiff requested a state fair hearing. In accordance with the applicable Federal and state regulations, plaintiff continued to receive a full shelter grant pending the hearing and its determination.

26. On or about the scheduled hearing date, December 4, 1972, plaintiff called the New York State Department of Social Services in Albany, and obtained a one-week adjournment to enable her to attend an out of state funeral.

27. Prior to the adjourned hearing date, Michael Otey promised plaintiff that either he would find a job and contribute to the household or else he would leave New York State to stay with relatives in West Virginia.

28. In view of the likelihood of this change in circumstances which would enable her to pay her rent, either through a partial contribution from Michael or a full shelter grant, plaintiff did not appear at the rescheduled fair hearing on December 11, 1972. She intended to inform the Nassau County Department of Social Services as soon as Michael Otey left the household or started contributing from his anticipated earnings.

29. Because of her failure to appear at the hearing, plaintiff Otey's shelter grant was reduced to two-thirds of $145.00 or $96.65, in accordance with 18 N.Y.C.R.R. 352.30(d).

30. In the month in which this reduction became effective, February, 1973, Michael Otey was still residing in plaintiff's household but not contributing any money to plaintiff. He was neither working nor receiving public assistance.

31. In order to forestall a possible eviction, the Nassau County Department of Social Services paid the landlord the $45.00 difference between the actual rental and the $100.00 which plaintiff had paid for February. However, plaintiff and her minor child continue to suffer grave and irreparable harm, injury, loss and damage through lack of

adequate funds. Plaintiff still receives only $96.65 for rent and the Nassau County Department of Social Services has proposed to recoup the $45 paid for February rent from plaintiff's future basic needs grants. If this proposed action is affirmed by the State Department of Social Services in a pending fair hearing, and undertaken each and every month, plaintiff and her minor son will soon be without any basic needs grant to purchase food and other necessities. If the proposed recoupment is disallowed by the State, the county will not provide the additional $45.00 and plaintiff will be in danger of eviction.

VII

First Cause of Action

32. Sec. 352.30(d) of the New York State Social Services Regulations provides:

> "A non legally responsible relative or unrelated person in the household, who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the lodger, the amount in excess of $15 per month shall be considered as income; for such boarding lodgers, the amount in excess of $60 per month shall be considered as income. In the event a lodger does not contribute at least $15.00 per month, the family's shelter allowance including fuel for heating, shall be a pro rata share of the regular shelter allowance."
>
> 18 N.Y.C.R.R. 352.30(d)

33. Despite the language about "pro rata share", the effect of this regulation is to assume that money is being

contributed towards the shelter needs of a public assistance family by the presence of another person in the house.

34. To base eligibility for public assistance on this presumed income is clearly inconsistent with 42 U.S.C. 601 *et seq.*, and the Federal Regulations promulgated pursuant thereto. See, e.g. 45 C.F.R. § 233.90(a) [36 F.R. 3868]:

> "(a) *State plan requirement.* A State plan under title IV-A of the Social Security Act must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extend [sic] that natural or adoptive parents are required to support their children. Under this requirement, *the inclusion in the family, or the presence in the home,* of a 'substitute parent' or 'man-in-the-house' *or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. In establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions.*"
>
> [italics added]

Accordingly, 18 N.Y.C.R.R. 352.30(d) is in violation of the Supremacy Clause of the United States Constitution, Article VI, Clause 2.

VIII

Second cause of action

35. This regulation, 18 N.Y.C.R.R. 352.30(d), creates an irreputable presumption that any person, regardless of age, consanguinity or financial status, living in a public assistance recipient's household is a "lodger", and has the ability to provide and in fact provides the family with income equivalent to a pro rata share of the household's shelter costs. To base a reduction or denial of public assistance on this conclusive presumption is arbitrary, irrational and unfair and consequently in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

IX

Third cause of action

36. The regulation is also in violation of the equal protection clause of the Fourteenth Amendment in that it arbitrarily and irrationally creates two classes of equally needy families. One class is composed of public assistance recipients who are eligible to receive a full public assistance grant either because there is no "lodger" residing with them or because the "lodger" contributes $15 per month. The other class is composed of public assistance recipients who are otherwise fully eligible to receive full public assistance, but will receive a reduced amount of assistance because of the presence in the household of a person who is not legally obligated and in fact does not

financially support the family, but is deemed to be a "lodger".

WHEREFORE, plaintiffs pray on behalf of themselves and all others similarly situated that this Court:

1. Declare this action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

2. Issue a preliminary and permanent injunction enjoining defendants, their employees, officers, agents, successors and all other persons in active concert and participation with them from enforcing 18 N.Y.C.R.R. 352.30(d).

3. Issue a permanent injunction mandating defendants, their employees, officers, agents, successors and all other persons in concert and participation with them to afford plaintiffs and all others similarly situated their right to the retroactive public assistance that defendants have wrongfully refused or deducted pursuant to 18 N.Y.C.R.R. 352.30(d).

4. Issue a final judgment declaring 18 N.Y.C.R.R. 352.30(d) unconstitutional and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, the Supremacy Clause, Article VI of the United States Constitution, and the Social Security Act, 42 U.S.C. par. 601 *et seq.* and the regulations promulgated thereunder by the United States Department of Health, Education Welfare.

5. Award plaintiffs their costs, disbursements and attorneys' fees herein.

6. Award plaintiffs such other, further and different relief as to this Court may appear just and equitable.

(Verified by Annie Taylor and Charlotte Otey,
May 14, 1973.)

Decision After the Fair Hearing, Exhibit "A" to Complaint.

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

ANNIE TAYLOR,

from a determination by the Nassau County Department of Social Services (hereinafter called the agency)

A fair hearing was held at Mineola, New York on March 14, 1973, before Hyman Asherof, Hearing Officer, at which the appellant, and a representative of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of appellant's grant of aid to dependent children insofar as same relates to the shelter portion of her budget. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant and her daughter are recipients of aid to dependent children.

(2) Living with them is appellant's sister who is not in receipt of public assistance and who does not contribute to the rent.

(3) The maximum rent as per filed schedules for an apartment, such as appellant's, for two persons is $145 and for three persons it is $165.

(4) The agency has budgeted appellant's shelter allowance at ⅔ of $165, or $110.

(5) Appellant claims that it should be budgeted at $145, the maximum for 2 persons since the third person does not contribute anything to the rent.

Pursuant to Section 352.30(d) of the Regulations of the State Department of Social Services a non-legally responsible relation in the household who is not receiving public assistance shall be deemed a lodger. In the event the lodger does not contribute at least $15 per month, the family's shelter allowance shall be pro rata share of the regular shelter allowance. Therefore, the agency's determination to allow the appellant a shelter allowance in the amount of $110 was correct and in accordance with the above cited Regulation.

DECISION: The determination of the agency is affirmed.

Dated: Albany, New York, Apr. 20, 1973.

ABE LAVINE
Abe Lavine
Commissioner

BY CARMEN SHANG
Carmen Shang
Assistant Commissioner

Answer of State Defendant.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant Abe Lavine, individually and as Commissioner of the Department of Social Services of the State of New York, for an answer to the complaint of plaintiffs Annie Taylor, et al., by his attorney Louis J. Lefkowitz, Attorney General of the State of New York, respectfully alleges:

FIRST: Denies on information and belief each and every allegation in paragraphs "1", "2", "2(a)", "2(b)", "5", "6", "6(a)", "6(b)", "6(c)", "6(d), "6(e)", "33", "35" and "36".

SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation in paragraphs "3", "11", "12", "13", "22", "26", "27" and "30".

THIRD: With respect to the allegations in paragraph "10", denies knowledge or information sufficient to form a belief as to the age of Virginia Taylor and as to whether or not she resides in plaintiff Taylor's household.

FOURTH: With respect to the allegations contained in paragraph "14", denies knowledge or information sufficient to form a belief as to the amount of shelter allowance received by plaintiff Taylor's sister prior to January, 1973 and as to how the total actual rent for plaintiff Taylor's household was met.

FIFTH: With respect to the allegations contained in paragraph "15", denies knowledge or information sufficient to form a belief as to whether plaintiff Taylor's sister re-

ceived any other form of income during January and February, 1973 and as to whether or not she was able to contribute any money to plaintiff Taylor.

SIXTH: With respect to the allegations in paragraph "20", denies on information and belief that plaintiff Taylor and her minor child have suffered or continue to suffer grave and irreparable harm, injury, loss and damage and/or that they lack adequate funds to purchase necessities requisite for a minimum standard of living and health; denies knowledge or information sufficient to form a belief as to all other allegations made therein.

SEVENTH: With respect to the allegations contained in paragraph "21", denies knowledge and information sufficient to form a belief as to whether or not plaintiff Otey and her minor child reside together at 303 Waverly Place, Freeport, New York.

EIGHTH: With respect to the allegations in paragraph "23", denies knowledge or information sufficient to form a belief as to whether or not Michael Otey was living in plaintiff Otey's household prior to October, 1972 and as to whether the $145 shelter allowance was sufficient to pay plaintiff Otey's actual rent.

NINTH: With respect to the allegations contained in paragraph "24", denies knowledge or information sufficient to form a belief as to the time when Michael Otey began living in plaintiff Otey's apartment.

TENTH: With respect to the allegations contained in paragraph "28", denies knowledge or information sufficient to form a belief as to the alleged reasons why plaintiff Otey did not appear at her re-scheduled fair hearing and as to her intentions with respect to the Nassau County Department of Social Services.

ELEVENTH: With respect to the allegations contained in paragraph "29", admit that plaintiff Otey's shelter grant was reduced to $96.65, in accordance with 18 NYCRR 352.30(d), because her failure to appear at the second scheduled fair hearing indicated her intention to abandon her claim to a higher shelter grant.

TWELFTH: With respect to the allegations contained in paragraph "31", denies on information and belief that plaintiff Otey and her minor child have suffered and/or continue to suffer grave and irreparable harm, injury, loss and damage and/or that they lack adequate funds and/or that they will be without any basic needs grant; denies on information and belief all other allegations made therein with respect to the pending decision of the New York State Department of Social Services since that decision was made on May 15, 1973 at which time the State Department reversed the decision of the Nassau County Department of Social Services and thereby disallowed the recoupment of $45 from plaintiff Otey by the County; denies knowledge or information sufficient to form a belief as to the possible future actions of the Nassau County Department of Social Services; the decision of the New York State Department of Social Services, dated May 15, 1973, is attached hereto and made a part hereof as Exhibit "A".

THIRTEENTH: With respect to the allegations contained in paragraph "32", admits only to the extent that the quoted passage is, in fact, the verbatim content of § 352.30(d) of the New York State Social Services Regulations.

FOURTEENTH: With respect to the allegations contained in paragraph "34", denies on information and belief each and every allegation made therein except to the extent that the quoted passage is, in fact, the verbatim content of 45 CFR § 233.90(a).

AS AND FOR A FIRST SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, ALLEGES THAT:

FIFTEENTH: The Court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SECOND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, ALLEGES THAT:

SIXTEENTH: The complaint fails to state a claim upon which relief may be granted.

AS AND FOR A THIRD SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, ALLEGES THAT:

SEVENTEENTH: This action is not properly maintainable as a class action.

AS AND FOR A FOURTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, ALLEGES THAT:

EIGHTEENTH: The request for an injunction against the enforcement of 18 NYCRR § 352.30(d) is not cognizable by a single judge of the United States District Court and the complaint contains no request for a three-judge Court. 28 U.S.C. § 2281.

WHEREFORE, it is respectfully requested that the complaint be in all respects dismissed and this Court grant such further relief as shall be necessary and proper.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Defendant
By: CONSTANCE B. MARGOLIN
CONSTANCE B. MARGOLIN
Deputy Assistant Attorney General

(Verified by Constance B. Margolin, June 25, 1973.)

Decision After Fair Hearing, Exhibit "A" to Answer of State Defendant.

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVCES

In the Matter of the Appeal of

CHARLOTTE OTEY

from a determination by the Nassau County Department of Social Services (hereinafter called the agency)

A fair hearing was held at Mineola, New York on April 13, 1973 before James I. Riley, Hearing Officer, at which the appellant, the appellant's representative and a representative of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of a grant of aid to dependent children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant is a recipient of a grant of aid to dependent children for herself and her one minor dependent child. On March 20, 1973 the agency determined to reduce appellant's grant by putting her rent on voucher and recouping the sum of $45.00 which appellant owes on her February rent.

(2) Appellant received a monthly shelter allowance of $96.66. In the month of February she failed to pay a full month's rent leaving $45.00 unpaid. Her actual rent is $145.00. She failed to pay her rent in full because an adult son who lives with her failed to give her his share of the rent.

(3) No other evidence of mismanagement of cash was introduced in evidence at the hearing.

(4) The agency sent a Notice of Intent to Reduce appellant's grant on March 20, 1973 to be effective April 6, 1973. The appellant requested a fair hearing to review the agency's proposed action on March 30, 1973. The agency was notified by the State Department of Social Services that appellant's grant must be continued without change until a fair hearing decision is issued. The agency has continued assistance unchanged to the appellant through the date of this hearing, and the agency has stated that assistance will be continued until a fair hearing decision is issued.

Section 381.3(a) of the Regulations of the State Department of Social Services provides that money payments shall be restricted when the inability of a recipient to handle cash has been demonstrated. The credible evidence establishes that there has been no demonstration that appellant is unable to handle cash. A single isolated instance of failure to pay rent in full for one month is not the quality of evidence contemplated by the Regulations, especially since the evidence establishes that appellant used all of her shelter allowance and a few dollars more to make the partial rent payment she made. Furthermore, the agency may not recoup the $45.00 in unpaid rent. Section 352.7 (g) (7) of the Regulations permits recoupment of a duplicate rent payment when the advance allowance for rent is made for the purpose of avoiding eviction. Appellant was not threatened with eviction and the agency made no advance allowance to avoid eviction. Accordingly, the agency erred in determining to place appellant's rent on restricted payments and it also erred in determining to reduce appellant's grant to recover the unpaid rent.

DECISION: The determinations of the agency are not and cannot be affirmed. The agency is directed to take appro-

priate action in accordance with the foregoing decision. The agency is further directed to report on its actions taken pursuant to this decision to the Metropolitan Office (fair hearing section) of the State Department of Social Services in accordance with the provisions of Section 358.22 of the Regulations of the State Department of Social Services.

Dated: Albany, New York
May 15 1973

ABE LAVINE
Abe Lavine
Commissioner

By CARMAN SHANG
Carmen Shang
Assistant Commissioner

Answer of County Defendant.

[SAME TITLE]

The defendant, James M. Shuart, individually and in his capacity as Commissioner of the Nassau County Department of Social Services, appearing herein by his attorney, Joseph Jaspan, County Attorney of Nassau County, for his answer to the verified complaint herein, respectfully alleges:

AS TO PLAINTIFFS' ALLEGATION OF JURISDICTION

FIRST: Upon information and belief, denies each and every allegation contained in paragraph marked "1" of the complaint except leaves for construction by the Court the legal conclusions alleged therein.

SECOND: Upon information and belief, denies each and every allegation contained in paragraph marked "2" "(a)" and "(b)" of the complaint except leaves for construction by the Court the legal conclusions alleged therein.

AS TO PLAINTIFFS' ALLEGATIONS OF PLAINTIFFS

THIRD: Denies that he has any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph numbered "3" of the complaint.

AS TO PLAINTIFFS' ALLEGATIONS OF CLASS ACTION

FOURTH: Upon information and belief, denies each and every allegation contained in paragraph numbered "5" of the complaint.

FIFTH: Upon information and belief, denies each and every allegation contained in paragraph numbered "6" and

subdivisions "(a)", "(b)", "(c)", "(d)" and "(e)" of paragraph "6" of the complaint.

AS TO PLAINTIFFS' ALLEGATIONS OF FACTUAL ALLEGATIONS

A. *Plaintiff Taylor*

SIXTH: Denies that he has any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs numbered "11", "15", and "18" of the complaint.

SEVENTH: Upon information and belief, denies each and every allegation contained in paragraphs numbered "16" and "20" of the complaint.

B. *Plaintiff Otey*

EIGHTH: Upon information and belief, denies each and every allegation contained in paragraph "21" of the complaint except admits that plaintiff Otey and her minor child reside together in Freeport, New York at 30 Waverly Place, and are recipients of public assistance in the federal-state AFDC program.

NINTH: Denies that he has any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in pargraph numbered "23" of the complaint except admits that plaintiff Otey was given her full budget allotment until January of 1973.

TENTH: Denies that he has any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs numbered "26", "27", "28" and "30" of the complaint.

ELEVENTH: Upon information and belief, denies each and every allegation contained in paragraph numbered "31" of the complaint.

ANSWERING THE FIRST ALLEGED CAUSE OF ACTION, DEFENDANT, SHUART, ALLEGES AS FOLLOWS:

TWELFTH: Upon information and belief, denies each and every allegation contained in paragraphs numbered "33" and "34" of the complaint.

ANSWERING THE SECOND ALLEGED CAUSE OF ACTION, DEFENDANT, SHUART ALLEGES AS FOLLOWS:

THIRTEENTH: Upon information and belief, denies each and every allegation contained in paragraph numbered "35" of the complaint.

ANSWERING THE THIRD ALLEGED CAUSE OF ACTION, DEFENDANT, SHUART, ALLEGES AS FOLLOWS:

FOURTEENTH: Upon information and belief, denies each and every allegation contained in paragraph numbered "36" of the complaint.

AS AND FOR A FIRST, SEPARATE, COMPLETE AND AFFIRMATIVE DEFENSE, DEFENDANT, SHUART, ALLEGES, UPON INFORMATION AND BELIEF, AS FOLLOWS:

FIFTEENTH: 18 NYCRR 352.30 (d) is part of the State Plan under Title IV of the Social Security Act.

SIXTEENTH: Said regulation has therefore been approved by the Secretary of the United States Department of Health, Education and Welfare.

SEVENTEENTH: The United States Department of Health, Education and Welfare is an indispensable party to this action.

AS AND FOR A SECOND, SEPARATE, COMPLETE AND AFFIRMATIVE DEFENSE, DEFENDANT, SHUART, ALLEGES, UPON INFORMATION AND BELIEF, AS FOLLOWS:

EIGHTEENTH: Sections 20(3-d) and 34 of the Social Services Law of New York State mandate compliance by defendant Shuart with 18 N.Y.C.R.R. 352.30(d). The plaintiffs are essentially seeking a declaration of the unconstitutionality of the aforementioned regulation and defendant Shuart is therefore not a proper or necessary party to this action.

AS AND FOR A THIRD, SEPARATE, COMPLETE AND AFFIRMATIVE DEFENSE, DEFENDANT, SHUART, ALLEGES, UPON INFORMATION AND BELIEF, AS FOLLOWS:

NINETEENTH: This action is not properly maintainable as a class action as the plaintiffs have failed to show in their action that the class is so numerous that joinder of all members is impracticable, that there are questions of law or fact common to the class, that the claims or defenses of the representative parties are typical of the claims or defenses of the class and that the representative parties would fairly and adequately protect the interests of the class.

WHEREFORE, defendant, James M. Shuart, individually and in his capacity as Commissioner of the Nassau County Department of Social Services demands judgment dismissing the complaint.

JOSEPH JASPAN
County Attorney of Nassau County

by JAMES N. GALLAGHER
Deputy County Attorney
Attorney for Defendant Shuart

Notice of Motion for Summary Judgment on Behalf of Annie Taylor and Charlotte Otey.

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that plaintiffs will bring the annexed motion for summary judgment on for hearing before this Court at Court Room 10, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 11th day of September, 1973, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: Hempstead, New York, August 23, 1973.

Yours, etc.,

LEONARD S. CLARK
By: THEODORE HOCHSTADT, Of Counsel
Nassau County Law Services Committee, Inc.
Attorney for Plaintiffs
285 Fulton Avenue
Hempstead, New York 11550
(516) 292-8100

To: LOUIS J. LEFKOWITZ, Esq.
Attorney General of New York
Attorney for Defendant Lavine
2 World Trade Center Plaza
New York, New York

JOSEPH JASPAN, Esq.
County Attorney of Nassau County
Attorney for Defendant Shuart
1 West Street
Mineola, New York

Motion for Summary Judgment.

[SAME TITLE]

Plaintiffs move the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, that it grant the following relief:

1. An order pursuant to Rule 23 of the Federal Rules of Civil Procedure determining that this action may properly proceed as a class action.

2. A preliminary and permanent injunction enjoining defendants, their employees, officers, agents, successors and all other persons in active concert and participation with them from enforcing 18 NYCRR 352.30(d) on the ground that this regulation violates the Social Security Act, 42 U.S.C. para. 601 *et seq.*, and the regulations promulgated thereunder by the United States Department of Health, Education and Welfare.

3. A permanent injunction mandating defendants, their employees, officers, agents, successors and all other persons in active concert and participation with them to afford plaintiffs and all others similarly situated their right to public assistance which defendants have wrongfully refused or reduced pursuant to 18 NYCRR 352.30(d).

The grounds of this motion are that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law for the reasons set forth in the annexed affidavit and the memorandum of law filed herewith.

LEONARD S. CLARK
By: THEODORE HOCHSTADT,

Of Counsel
Nassau County Law Services
Committee, Inc.
Attorney for Plaintiffs

Affidavit of Theodore Hochstadt in Support of Motion.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NASSAU } ss.:

THEODORE HOCHSTADT, being duly sworn, deposes and says:

1. I am of counsel to the attorney of record for the plaintiffs and submit this affidavit in support of plaintiffs' motion for summary judgment pursuant to § 56 of the Federal Rules of Civil Procedure.

2. This action was commenced by filing a verified complaint on May 17, 1973. A summons and complaint were served upon the defendants and upon the Attorney General of New York State on the same date. The answer of defendant James M. Shuart was served on or about June 4, 1973 and the answer of defendant Abe Lavine was served on or about June 25, 1973. Interrogatories, annexed herewith, were served upon the defendants on May 31, 1973. In his answer to the interrogatories, verified by Carmen Shang on July 10, 1973, defendant Lavine fails and refuses to analyze the notices and decisions in the possession of his Department to provide answers to questions 2(c)(d)(a) and 4(a)(b). In his answer to the Interrogatories, verified on August 13, 1973, defendant Shuart fails and refuses to provide answers to questions 1(b)(c) and 2. Nevertheless, for the reasons set forth in this affidavit and the memorandum of law submitted herewith, an order pur-

suant to Rule 37, Fed. R. Civ. P. has not been requested since plaintiffs are entitled to summary judgment.

3. This action seeks declaratory and injunctive relief in order to invalidate and enjoin the continued implementation of 18 NYCRR 352.30(d) on the ground that it violates the applicable Federal statute (42 U.S.C. 601 *et seq.*) and Federal regulation 45 C.F.R. § 233.90(a)) and the Due Process and Equal Protection clauses of the Fourteenth Amendment in that said state regulation effectuates a reduction in public assistance shelter grants without any finding that public assistance recipients' needs have decreased or that their income has increased.

4. Defendants' answers do not deny the essential facts of plaintiffs' claim, to wit:

(a) Plaintiffs are recipients of public assistance in the Federal AFDC category who reside with their minor children.

(b) Non-legally responsible relatives who are not recipients of public assistance are residing in plaintiffs' households.

(c) At no time have the defendants had evidence to indicate that the relatives are contributing toward the rent or other household expenses nor have they even claimed that the relatives are contributing.

(d) Pursuant to the subject regulation, 18 NYCRR 352.30(d), plaintiffs have been furnished a shelter allowance based on a pro rata share of the County Department shelter schedule for the total number of persons in the household, or the actual rental if lower, rather than a shelter allowance based solely on the number of public assistance recipients in the household in accordance with the shelter schedule.

5. Our memorandum of law submitted herewith sets forth the legal basis for plaintiffs' motion and replies to the affirmative defenses raised by defendants.

6. With respect to plaintiff Charlotte Otey, your affiant has been informed by her landlord, the Freeport Urban Renewal Agency, that her rent delinquency is continuing to increase at the rate of $48.34 per month. See letter dated July 10, 1973, annexed hereto as Exhibit "A". This represents the one-third share of plaintiff's $145 per month rent which the defendant Shuart has not been paying by virtue of his implementation of the subject state Social Services Regulation.

7. In compliance with the Order of this Court, dated August 6, 1973, your deponent discussed the possibility of settlement of this action in telephone conversations on August 22, with Constance Margolin, Assistant Attorney General, of the office of Louis J. Lefkowitz, attorney for defendant Lavine, and Morton Meltzer, Deputy County Attorney, of the office of Joseph Jaspan, attorney for defendant Shuart. It was recognized, however, that settlement would not be possible since the parties are not willing to alter their positions with respect to the validity of the state-wide administrative regulation at issue. Your deponent informed the attorneys for the defendants that he would soon be serving them with a motion for summary judgment, returnable on September 11, 1973.

8. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that summary judgment be made and entered in favor of plaintiffs on the grounds that there is no genuine issue of any material fact and that plaintiffs are entitled to a judgment as a matter of law.

(Sworn to by Theodore Hochstadt,
August 23, 1973.)

Letter From Justin B. Stone to Theodore Hochstadt, Exhibit "A" to Hochstadt Affidavit.

(EMBLEM)

FREEPORT
Urban Renewal Agency

200 E. Sunrise Highway, Freeport, New York 11520
Telephone 516 878-4432, 4350, 4000 ext 203

James R. Dunne — Executive Director

July 10, 1973

Mr. Theodore Hochstadt—Attorney
Nassau County Law Services
285 Fulton Street
Hempstead, New York 11550

Dear Sir:

As per your request today I am enclosing a copy of the ledger sheet of Charlotte Otey of 30 Waverly Place, Freeport, N. Y.

You will note that her rent is $145.00 per month and she became delinquent at the end of April by $48.34, Social Services pays her rent directly to us in the amount of $96.66 which is the exact difference. Her delinquency therefore is increasing at the rate of $48.34 per month.

Her delinquency of $145.02 at the end of June will become $193.36 at the end of July.

Very truly yours,

JUSTIN B. STONE
Justin B. Stone
Fiscal Manager

JBS:jr

Notice of Cross-Motion to Dismiss Complaint and for Summary Judgment on Behalf of State Defendants.

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the complaint and all the papers heretofore had herein, including the annexed memorandum of law, the undersigned will move this Court, before Judge Jack B. Weinstein, at Room , United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 17th day of September, 1973 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing the action on the respective grounds that the Court lacks jurisdiction over the subject matter and that the complaint fails to state a claim upon which relief can be granted.

PLEASE TAKE FURTHER NOTICE that the defendant Lavine demands, in the alternative, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, that the Court grant a summary judgment in defendant's favor on the statutory and pendent claim alleged.

Dated: New York, New York, September 13, 1973.

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants

Memorandum and Order of District Judge Jack B. Weinstein.

To: LEONARD S. CLARK, Esq.
Nassau County Law Services
Committee, Inc.
Attorney for Plaintiffs

VINCENT ESPOSITO, Esq.
Nassau County Attorney's Office
Attorney for Defendant Shuart

Memorandum and Order of District Judge Jack B. Weinstein.

[SAME TITLE]

Plaintiffs, for themselves and others similarly situated, move for summary judgment; defendants move to dismiss on the grounds of lack of jurisdiction and failure to state a claim upon which relief can be granted. Plaintiffs' motion must be granted.

Annie Taylor's rent allowance has been reduced by one-third on the presumption that her sister, who lives with her, is contributing to its payment. Charlotte Otey has had her rental allowance reduced by one-third on the presumption that her son, who lives with her, is contributing to household expenses. There is no evidence of such contributions by those adults living in plaintiffs' homes.

The ruling is said to be required by New York State Welfare Regulation 18, N.Y.C.R.R. 352.30(d) reading in

part as follows:

> "A non-legally responsible relative or unrelated person in the household, who is not applying for nor receiving public assistance shall not be in the budget and shall be deemed to be a lodger or boarding lodger. . . . In the event a lodger does not contribute at least $15 per month, the family's shelter allowance including fuel for heating, shall be a pro rata share of the regular shelter allowance." 18 NYCRR 352.30(d) (1st and 4th sentences.)

This regulation, incorporating as it does a presumption of financial support having no basis in fact, is alleged to be inconsistent with the applicable federal regulation, 45 C.F.R. 233.90(a), 36 Fed. Reg. 3868, reading as follows:

> "A State plan under title IV-A of the Social Security Act must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the employment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law or general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home of a 'substitute parent' or 'man-in-the-house' or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the avail-

ability of income by the State. In establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contribution."

Almost identical claims were before the District Court for the Southern District of New York, *Hurley* v. *VanLare*, 72-C-3423. The *Hurley* case involved a non-related male sharing the home. In a full opinion dated October 3, 1973 Judge Bauman ruled that the action was properly brought on behalf of a class and that the New (COPY MISSING?) with federal law. See Appendix A, attached. The opinion is convincing and its reasoning on class action status, jurisdiction, inconsistency of the state regulation and injunctive relief is adopted by this court.

The class in *Hurley* can be construed as including the class in the instant case. If it is not, then a fortiori the plaintiffs before us are entitled to injunctive relief since it is no more likely that a sister or a son will share in the support of a household than will an adult unrelated cohabitating male.

The issue of retroactive benefits is more difficult. As plaintiffs admit (Brief pp. 29-30), the Second Circuit, unlike other circuits, denies retroactive benefits. Judge Bauman, as I do, felt bound by the rule of this Circuit. Were it open to the court, it would adopt what it considers the fairer rule, permitting the court to order retroactive payments where the family, and particularly the children, are continuing to suffer because of the deprivation. It is well known that rents must be paid and that given a fixed

allowance and a rising rent or a fixed rent and a decreasing allowance, poor families will have to reduce expenditures for such necessities as food or clothing. It may well be that in the instant case there has been, for example, skimping on purchases of winter clothing or blankets for the children in order to make up the one-third rental allowance deficit. This may well adversely affect their health during the coming winter when, we can judicially notice, fuel will be short in this area.

The defenants are urged to reexamine the situation of the plaintiffs to insure that there will be no adverse consequences to the children involved as a result of the failure of this court to order retroactive benefits.

Settle order on forty-eight hours notice.

So ordered.

Dated: Brooklyn, New York
October 10, 1973

JACK B. WEINSTEIN
U.S.D.J.

Judgment and Order.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

[[SAME TITLE]]

This cause having come on to be heard on plaintiffs' motion for a class action determination pursuant to Rule 23 of the Federal Rules of Civil Procedure and for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and on defendants' motion to dismiss the action pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative for summary judgment, and the Court having considered the pleadings in the action, the affidavits, interrogatories and memoranda of law submitted by the parties herein, and the Court having heard oral argument, and due deliberation having been had thereon, and upon filing the opinion of the Court dated the 10th day of October, 1973, and filed the 11th day of October, 1973, it is hereby

ORDERED, that defendants' motions to dismiss the action, or in the alternative for summary judgment, be and the same hereby are denied; and it it is further

ORDERED, that the above-entitued action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class of plaintiffs consists of all residents of the State of New York who are, or were, or will be, receiving public assistance and who have had their grants of public assistance reduced, terminated, suspended or denied, or who are or may be threatened with reduction, termination, suspension or denial of public assistance, solely because of the presence of a lodger in the home pursuant to 18 N.Y.C.R.R. § 352.30(d); and it is further

Judgment and Order.

ORDERED, that plaintiffs' motion for summary judgment be, and the same is, granted to the extent hereinafter set forth; and it is further

ORDERED, that defendants, their officers, agents, servants, employees and successors be, and hereby are, permanently enjoined from enforcing 18 N.Y.C.R.R. § 352.30(d); and it is further

ORDERED, that plaintiffs' motion for a summary judgment be, and the same hereby is, denied to the extent it seeks an order directing the payment of retroactive welfare payments; and it is further

ADJUDGED AND DECREED, that plaintiffs are entitled to, and are hereby granted, a declaratory judgment in this action that 18 N.Y.C.R.R. § 352.30(d) violates the Federal Social Security Act, 42 U.S.C. § 601, *et seq.*, and the regulations promulgated pursuant thereto by the Department of Health, Education and Welfare, 42 C.F.R. § 233.90; and it is further

ORDERED, that execution of this order is stayed for one week pending application by defendants to the Court of Appeals, Second Circuit, from an additional stay pending final disposition of any or all appeals taken herein. In view of the lack of retroactivity and the fact that aid to dependent children is hardly above subsistence level, the children should not bear the risk of reversal during the months it may take to decide this matter.

Dated: New York, New York, October 23, 1973.

JACK B. WEINSTEIN
HONORABLE JACK B. WEINSTEIN
United States District Judge

Amended Judgment and Order.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

This cause having come on to be heard on plaintiffs' motion for a class action determination pursuant to Rule 23 of the Federal Rules of Civil Procedure and for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and on defendants' motion to dismiss the action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure or in the alternative for summary judgment, and the Court having considered the pleadings in the action, the affidavits, interrogatories, and memoranda of law submitted by the parties herein, and the Court having heard oral argument, and due deliberation having been had thereon, and upon filing the opinion of the Court dated October 10, 1973, and filed on October 11, 1973, and defendants having called this Court's attention to errors appearing in the original Judgment and Order entered on October 24, 1973; it is

ORDERED, that this Amended Judgment and Order shall supersede for all purposes the Judgment and Order entered on October 24, 1973; and it is further

ORDERED, that defendants' motions to dismiss the action or in the alternative for summary judgment be and the same hereby are denied; and it is further

ORDERED, that the above-entitled action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class of plaintiffs consists of all

residents of the State of New York who are or were or will be receiving public assistance, and who have had their grants of public assistance reduced, terminated, suspended or denied, or who are are or may be threatened with reduction, termination, suspension, or denial of public assistance, solely because of the presence of a non-contributing lodger in the home pursuant to 18 NYCRR § 352.30(d); and it is further

ORDERED, that plaintiffs' motion for summary judgment be the same is granted to the extent hereinafter set forth; and it is further

ORDERED, that defendants, their officers, agents, servants, employees, and successors be and hereby are permanently enjoined from enforcing that portion of 18 NYCRR § 352.30 (d) to the extent that it provides that when a non-legally responsible person who is neither applying for nor receiving public assistance resides in a household with public assistance recipients and does not contribute at least of $15, the public assistance family's shelter allowance including fuel for heating shall be a pro rata share of the regular shelter allowance; and it is further

ORDERED, that plaintiffs' motion for a summary judgment be and the same hereby is denied to the extent it seeks an order directing the payment of retroactive welfare payments; and it is further

ADJUDGED AND DECREED that plaintiiffs are entitled to and are hereby granted a declaratory judgment in this action that the portion of 18 NYCRR § 352.30(d) hereinbefore described violates the Federal Social Security Act, 42 U.S.C. § 601, et seq. and the regulation promulgated pursuant thereto by the Department of Health, Education and Welfare, 45 C.F.R. § 233.90; and it is further

State Defendant's Notice of Appeal to Court of Appeals for the Second Circuit.

ORDERED, that execution of this order is stayed for one week pending application by defendants to the Court of Appeals, Second Circuit, for an additional stay, pending final disposition of any or all appeals taken herein. In view of the lack of retroactivity and the fact that aid to dependent children is hardly above subsistence level, the children should not bear the risk of reversal during the months it may take to decide this matter.

Dated: New York, New York
December 18, 1973

s/
HONORABLE JACK B. WEINSTEIN
United States District Judge

Filed
11 AM
Dec 18, 1973

State Defendant's Notice of Appeal to Court of Appeals for the Second Circuit.

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that defendant Abe Lavine hereby appeals to the United States Court of Appeals for the Second Circuit from an order of the United States District Court for the Eastern District of New York, dated October 23, 1973, enjoining defendant Lavine from enforcing 18 N.Y.C.R.R. § 352.30(d) and declaring 18 N.Y.C.R.R. § 352.30(d) in violation of the Federal Social Security Act,

State Defendant's Notice of Appeal to Court of Appeals for the Second Circuit.

42 U.S.C. § 601, *et seq.*, and in violation of the regulations promulgated pursuant thereto by the Department of Health, Education and Welfare, 42 C.F.R. § 233.90, and from each and every part of said order, except defendant Lavine does not appeal from that part of the order which denies plaintiffs' motion for a summary judgment directing the payment of retroactive welfare benefits.

Dated: New York, New York
October 25, 1973

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine

.....

CONSTANCE B. MARGOLIN
Deputy Assistant Attorney
General

To: LEONARD S. CLARK, Esq.
Nassau County Law Services
Committee, Inc.

VINCENT M. ESPOSITO, Esq.
Office of the County Attorney

PROCEEDINGS BEFORE THE COURT OF APPEALS FOR THE SECOND CIRCUIT IN THE CONSOLIDATED APPEALS OF TAYLOR v. LAVINE, DOC. NO. 73—2731, AND HURLEY v. VAN LARE, DOC. NO. 73—2671

Letter From David S. Kellogg to Borge Varmer Submitted by State Appellants.

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
1450 Western Avenue
Albany, New York 12203

ABE LAVINE
Commissioner
FELIX INFAUSTO
Deputy Commissioner

December 4, 1973

Borge Varmer
Regional Attorney
Social & Rehabilitation Service
Region II
Department of HEW
26 Federal Plaza
New York, New York 10007

Dear Mr. Varmer:

Pursuant to our conversation of last week, I am requesting an opinion by your office on the legitimacy of 18 NYCRR 352.31(d) [352.30(c) and (d)]. Specifically, the questions for which I am requesting an answer are the following:

1) Is a state policy of pro-rating a shelter allowance so as to reflect the percentage of public assistance recipients residing in a household valid under 45 CFR 233.90?

2) If a state grants a full shelter allowance to an AFDC (ADC) recipient who has persons not in receipt of public assistance residing with him, is

the total expenditure thus made reimbursable to the same extent as a shelter allowance made to an AFDC household consisting entirely of recipients?

As you are aware, I am asking these questions in connection with this Department's position in the case of *Hurley* v. *Lavine*. As the appeal in the case is in an advanced stage, I sincerely implore you to expedite your reply as much as possible.

Sincerely yours,

DAVID S. KELLOGG
Senior Attorney
New York State Department
of Social Services

Letter From Elmer W. Smith to David S. Kellogg Submitted by State Appellants.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Region II
Federal Building
26 Federal Plaza
New York, New York 10007

SOCIAL AND REHABILITATION SERVICE

January 15, 1974

Mr. David S. Kellogg, Esq.
Senior Attorney
New York State Department
of Social Services
1450 Western Avenue
Albany, New York 12203

Dear Mr. Kellogg:

This is in response to your letter of December 4, 1973, to the Regional Attorney, requesting this Department's interpretation of the validity of the New York State regulation 18 NYCRR 352.30(c) and (d). Since you raise a policy question the matter was referred to this office.

Specifically you asked:

"1) Is a state policy of pro-rating a shelter allowance so as to reflect the percentage of public assistance recipients in a household valid under 45 CFR 233.90?

2) If a State grants a full shelter allowance to an AFDC (ADC) recipient who has persons not in receipt of public assistance residing with him, is the total expenditure thus reimbursable to the

Letter From Elmer W. Smith to David S. Kellogg
Submitted by State Appellants.

same extent as a shelter allowance made to an AFDC household consisting entirely of recipients?"

In response to your first question, HEW has permitted states to prorate shelter allowances to reflect the percentage of public asistance recipients in a household. Such a proration is not considered an assumption of income, but rather a recognition that per-individual costs decrease as the number of individuals living together increases.

In response to your second question, it has been the policy of HEW to allow federal matching for AFDC shelter payments when a state grants a full shelter allowance to an AFDC recipient who has persons not in receipt of public assistance residing with him.

Sincerely yours,

ELMER W. SMITH
Regional Commissioner

Opinions of the Court of Appeals for the Second Circuit.

HAYS, *Circuit Judge*:

This court is again called upon to pass on a challenge to New York's administration of its program for state Aid to Families with Dependent Children (AFDC).

The federal AFDC program found in sections 401 to 444 of the Social Security Act of 1935, as amended, 42 U.S.C. §§ 601-644 (1970), provides financial aid to states on a matching funds basis to assist the "needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent . . . .", 42 U.S.C. § 606(a) (1970). Each state wishing to qualify for sums appropriated by Congress must submit a plan for "aid and services to needy families with children," 42 U.S.C. § 601 (1970). The plan must contain each provision on the list set forth in section 402(a) of the Social Security Act and must be approved by the Secretary of Health, Education and Welfare, 42 U.S.C. § 602(b) (1970). Among the requirements found in section 402(a) are that the state plan furnish aid "with reasonable promptness to all eligible individuals," 42 U.S.C. § 602(a)(10) (1970), and that the state agency in determining need "take into consideration any other income and resources of any child or relative claiming aid to families with dependent children." 42 U.S.C. § 602(a)(7) (1970). New York has submitted such a plan and from time to time amended it. The plan and amendments have been approved by the Secretary.

Among the New York regulations under which AFDC funds are distributed are 18 N.Y.C.R.R. § 352.30(d), which reduces the maximum shelter allowance available to a recipient family pro rata to the extent that there are non-eligible lodgers living in the household, and 18 N.Y.C.R.R. § 352.31(a)(3)(iv), which treats a man living with a fe-

male recipient but not married to her as a "lodger." Plaintiffs Hurley, Taylor and Otey challenged these regulations in separate actions in two federal district courts as creating a conclusive presumption offensive to due process, as denying them the equal protection of the laws, and as invading their rights to privacy and free association. They also claimed that the regulations are in effect "substitute parent" regulations forbidden for state plans by section 406(a) of the Social Security Act and 45 C.F.R. § 233.90(a) (1973). The single district judge upheld the statutory claims and thus found it unnecessary to consider whether a court of three judges should be convened under 28 U.S.C. § 2881.

The New York regulations in question provide as follows:

> "When a female applicant or recipient is living with a man to whom she is not married . . . his available income and resources shall be applied in accordance with the following:
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> • • •
>
> "(iv) When the man is unwilling to assume responsibility for the woman or her children, and there are no children of which he is the acknowledged or adjudicated father, he shall be treated as a lodger in accordance with section 352.30(d)."[1] 18 N.Y.C.R.R. § 352.31(a)(3).

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[1] In the version of 18 N.Y.C.R.R. before the district courts, 18 N.Y.C.R.R. § 352.31(a)(3)(iv) referred to section 352.30 (c), rather than to section 352.30(d). The *Hurley* district court held that the reference was erroneous, that it should have been to section 352.30(d). —— F. Supp. ——at n.1. Appellants, state officials entrusted with administering the regulation, did not contest that determination. The text of section 352.31(a)(3)(iv) was amended effective April 2, 1973, to refer to section 352.30(d).

"A non-legally responsible relative or unrelated person in the household, who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. . . . In the event a lodger does not contribute at least $15 per month, the family's shelter allowance including fuel for heating, shall be a pro rata share of the regular shelter allowance." 18 N.Y.C.R.R. § 352.30(d).

45 C.F.R. § 233.90(a) (1973) provides as follows:

"A State plan under title IV-4 of the Social Security Act [relating to the AFDC program] must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extend [sic] that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a 'substitute parent' or 'man-in-the-house' or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. In establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current

use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions."

The district court in each of the two cases found the New York regulations offensive to the Social Security Act and 45 C.F.R. § 233.90(a), and accordingly granted declaratory and injunctive relief. We reverse and remand for the convening of a three-judge court to consider the constitutional issues raised by the appellees.

I.

The facts in both cases are uncontroverted.

A. *Hurley* v. *Van Lare.*

Appellee Rose Hurley lives with her three dependent children, aged ten, five and five years, in Mount Vernon, New York. She and her children have been living apart from her husband since 1967; she has had no contact with him since 1967 and does not know where he is. The Hurleys receive public assistance under the New York AFDC plan as it is administered by the Westchester County Department of Social Services.

During the four-month period from November 1970 to February 1971, an unrelated male friend of Mrs. Hurley stayed with her and her children at their Mount Vernon residence. The friend was under no legal obligation to support the Hurleys, and in fact he made no contribution to their support. His presence did not increase the amount of rent that Hurley was obliged to pay, $150.00 per month. During the same four-month period, the Westchester De-

partment of Social Services deducted $35 per month from Hurley's recurring AFDC grant, presumably in accordance with 18 N.Y.C.R.R. § 352.30(d).

On November 12, 1970, Hurley requested a "Fair Hearing," a proceeding provided for in 18 N.Y.C.R.R. §§ 358.1-358.27, to review the reduction of her AFDC grant. A hearing was held on March 22, 1971, and on September 20, 1971, appellant Van Lare, the Acting State Commissioner of the Department of Social Services, rendered a "Decision after Fair Hearing" in which he found the facts to be substantially as stated above. He upheld the determination of the Westchester County Department that Hurley's grant should be reduced, but diminished the amount of the reduction to $30.00.

Thereafter, on August 11, 1972, Hurley brought an action in the District Court for the Southern District of New York on behalf of herself and all others similarly affected by sections 352.31(a)(3)(iv) and 352.30(d) to secure declaratory relief, an injunction against enforcement of the regulations, and judgment for retroactive AFDC payments.

Defendants Van Lare and Lavine, appellants here, are respectively Acting Commissioner and Commissioner of the Department of Social Services of New York, and defendant Kurtis is Commissioner of Social Services for Westchester County.

Hurley based her demand for an injunction on the theory that she has not associated with her friend out of fear that her public assistance grant will be reduced, as it was in November 1974, by the enforcement of sections 352.31(a)(3)(iv) and 352.30(d). She contended that the regulations are offensive to the Due Process and Equal Protection Clauses of the Fourteenth Amendment, that they are in violation of her rights of privacy and free association, and that they are invalid under section 402 and 406 of the

Social Security Act, 42 U.S.C. §§ 602, 606 (1970), and 45 C.F.R. § 233.90(a).

The district court did not convene a three-judge court under 28 U.S.C. § 2284 (1970) to consider the merits of the constitutional claims. See 28 U.S.C. § 2281 (1970). But the district court determined that at least the Due Process claim is sufficiently substantial to vest the court with subject matter purisdiction under 28 U.S.C. § 1343(3) (1970), and that under the doctrine of pendent subject matter jurisdiction it had the power to decide the statutory claim.

On Hurley's motion for summary judgment, the district court held that the New York regulations violate section 406 of the Social Security Act and 45 C.F.R. § 233.90(a), as interpreted by the Supreme Court in *King* v. *Smith,* 392 U.S. 309 (1968), and *Lewis* v. *Martin,* 397 U.S. 552 (1970):

> "[T]he inevitable result of these regulations is to reduce, perhaps drastically, the stipend for those who are eligible. In the case of a mother with one child, for example, the presence of a non-contributing male lodger would reduce the rental stipend by 33⅓%. This devasting reduction means in practice that rental payments must be met out of that portion of the welfare stipend allotted for food and clothing.
>
> "The [New York] regulations thus conflict directly with § 233.90. . . . Despite the defendants' protestations to the contrary, a *pro rata* reduction does indeed assume that the male lodger will pay his own way, whether or not he actually does. That is precisely the assumption found impermissible in *King* and *Lewis.*" —— F. Supp. at ——.

In granting summary judgment, the district court gave declaraotry relief and enjoined appellants from enforcing the challenged regulations, but denied Hurley's claim for

retroactive welfare payments.[2] The district court also granted Hurley's motion that the action be designated a class action under Rule 23(c).

The appellants have appealed the order granting the summary judgment and class action motions, and Hurley has appealed the denial of retroactive benefits.

B. *Taylor and Otey* v. *Lavine.*

Annie Taylor, her six-year-old child, and her sister, Virginia Taylor, live together in Freeport, Long Island. Annie Taylor and her child receive public assistance under the New York AFDC program as it is administered by the Nassau County Department of Social Services. Prior to January 1, 1973, the sister had received aid under the state home relief program, but after that date she received no public assistance. The sister is under no legal obligation to support Annie Taylor or her child, and she in fact makes no contribution to Taylor's $180 monthly rental.

Prior to January 1, 1973, the three Taylors were receiving $155 per month in shelter allowance, the maximum allowance available for a household of three persons according to a schedule issued by the Nassau County Department of Social Services. When the sister was dropped from the home relief program, Annie Taylor's shelter allowance was reduced to $110.00, two-thirds of $155, under 18 N.Y.C.R.R. § 352.30(d). Taylor requested the maximum shelter allowance for two persons, $145.00. Her request was denied. She demanded and received a "Fair Hearing" at which facts were found substantially in accordance with

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[2] The district courts properly denied retroactive payments, relying on our decision in *Rothstein* v. *Wyman*, 467 F.2d 226, 235 (2d Cir. 1972), cert. denied, 411 U.S. 921 (1973), which has recently been approved by the Supreme Court in *Edelman* v. *Jordan*, —— U.S. ——, 42 U.S.L.W. 4419, 4423 (Mar. 25, 1974.

the foregoing statement. Because the diminished shelter allowance was not enough to pay her rent, Taylor fell behind in her rental payments and was eventually the subject of an eviction order.[3]

Plaintiff Charlotte Otey and her thirteen-year-old son, like the Taylors, reside in Freeport, and are recipients of AFDC aid. When Otey's 23-year-old son, not a public assistance recipient, moved into the Otey apartment in October, 1972, Otey's shelter allowance was reduced from $145.00, the maximum allowance for two people, to $96.65, two-thirds of the maximum. Otey demanded an opportunity for a "Fair Hearing," which was granted, but she failed to appear.

Taylor and Otey brought an action in the Eastern District of New York, making claims similar to those asserted in *Hurley* v. *Van Lare*, and seeking similar relief, except that they did not contest the validity of 18 N.Y.C.R.R. § 352.31(a)(3)(iv). Defendant Shuart is Commissioner of the Department of Social Services of Nassau County. The district court granted the plaintiff's motion for summary judgment, and gave the declaratory and injunctive relief sought, adopting the *Hurley* district court's "reasoning on class action status, jurisdiction, inconsistency of the state regulation and injunctive relief. . . ." It denied retroactive AFDC payments.

Lavine and Shuart appeal from the summary judgment.

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[3] The eviction order was nullified when Taylor paid her overdue rent out of the proceeds of her April 1973 grant, a grant increased to the pre-January 1, 1973, level because of the fact that her sister began to receive aid under the joint federal-State Aid to the Disabled Program on March 14, 1973. On the basis of the limited record before us we do not decide whether Taylor's claim for declaratory and injunctive relief is moot. On remand, the district court should consider whether her claim presents a justiciable controversy. See *Hall* v. *Beals*, 396 U.S. 45, 48 (1969); *Golden* v. *Zwickler*, 394 U.S. 103, 108 (1969).

II.

Without passing on the constitutional claims, we agree they are sufficiently substantial to support jurisdiction under the liberal test the Supreme Court has recently announced in *Goosby* v. *Osser*, 409 U.S. 512 (1973). Where the constitutional claim is sufficient to vest the district court with jurisdiction, it is proper for a single judge to decide the statutory question under pendent jurisdiction, *Hagans* v. *Wyman*, —— U.S. ——, 42 U.S.L.W. 4381 (Mar. 25, 1974), and, if he sustains it, to defer requesting a three-judge court under 28 U.S.C. § 2281, pending review.

Hurley, Taylor and Otey base their claim that the New York regulations are contrary to federal law on two Supreme Court decisions: *King* v. *Smith*, 392 U.S. 309 (1968), and *Lewis* v. *Martin*, 397 U.S. 552 (1970). On careful consideration of these cases, it is clear that neither justifies the district courts' interference with New York's program for distributing AFDC grants.

In *King* v. *Smith*, 392 U.S. 309 (1970), Alabama AFDC recipients brought an action to enjoin enforcement of a state regulation which provided that "an 'able-bodied man, married or single, is considered a substitute father of all the children of the applicant . . . mother' . . . if 'he lives in the home with the child's natural or adoptive mother for the purpose of cohabitation.'" 392 U.S. 313-14 (emphasis deleted). The effect of the regulation under Alabama law was to remove the family from the category of aid recipients created by section 406(a) of the Social Security Act: because of the presence of the "substitute father," Alabama presumed that there was no "continued absence . . . of a parent." 42 U.S.C. § 606(a) (1970). The Supreme Court held that the Alabama rule "defines 'parent' in a manner that is inconsistent with § 406(a) of the So-

cial Security Act." 392 U.S. at 333. Reasoning that the purpose of the federal AFDC program is to protect and benefit needy and dependent children, the Court said that "the only kind of 'parent,' under § 406(a), whose presence in the home would provide adequate economic protection for a dependent child is one who is legally obligated to support him." 392 U.S. at 332.

Alabama asserted that two state governmental interests were advanced by the substitute father rule: the state's interest in discouraging meretricious sexual relationships, and the state's interest in allocating its share of AFDC funds according to the needs of its citizens. As to the first interest, the Supreme Court allowed that states generally have broad discretion in regulating sexual behavior outside of marriage, but held after examining the legislative history of the Social Security Act that Congress did not intend section 406(a) to be a lever in the hands of state legislators to compel compliance with local standards of moral conduct. 392 U.S. at 320-27. As to the second interest, the Court granted that Alabama had the power to set the level of benefits and standard of need under its plan, but held that in determining need it must account for the actual resources of the child. 392 U.S. at 332.

In one sense, the *King* holding does not bear directly on the instant case. Unlike the Alabama substitute father regulation, the New York regulation does not presume to define "parent" artificially to deny eligibility to the family housing a lodger. The meaning of the term "parent" as is used in section 406(a) is therefore not directly at issue. The New York regulation merely determines the level of payment to the eligible family on the basis of the presence or absence of a lodger in the recipient household. This method of computing shelter allowance is permitted under the *King* v. *Smith* rationale if it is not designed

to vindicate a moral interest unrelated to the need of the family, and if it realistically determines the level of need. As to the first point, it is clear that there is not the punitive aspect to the New York regulation that there was in the Alabama substitute father regulation. This is not a case of New York trying to impose "middle class morality" on the welfare recipient, using AFDC as an instrument of social control. This fact is illustrated by the Otey and Taylor cases, cases in which the shelter allowances were reduced because of the presence of persons other than the mother's paramour in the recipient household. The appellees' claim that sections 352.30(d) and 352.31(a)(3)(iv) offend the principle in *King* v. *Smith* thus stands or falls on their assertion that the regulations create a conclusive presumption of lodger contribution to the AFDC unit's rental expense, and that this presumption does not account for the actual needs of the AFDC-eligible family.

Under the long-standing administrative interpretation of section 402(a)(7) of the Social Security Act, only real sources of income may be considered by the state in determining need. The most recent embodiment of that interpretation, section 233.90(a) of the Health, Education and Welfare regulations governing the content of state plans, clearly states that the presence of any individual except a person legally obliged to support the child "is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State." Any doubt remaining on the issue was removed by the Supreme Court's holding in *Lewis* v. *Martin*, 397 U.S. 552 (1970), that section 233.90(a) precluded California from attributing income to an AFDC-eligible child from a non-adopting stepfather who had no duty of support under state law.

Although we agree that federal law prohibits a conclusive presumption of support, we do not agree that the

New York regulations here in question imply such a presumption. The regulations imply only that the lodger's presence evidences the recipient family's diminished need for housing space. Section 352.30(d) does not attribute a non-existent obligation of support to the lodger, nor does it deny the AFDC-recipient children or caretaker their share of the actual housing expenditures. Prorating housing costs between the recipient and non-recipient simply reflects the separability of the need of the AFDC-eligible family members from the needs of persons who have not demonstrated their eligibility for public assistance. Indeed, if a section 352.20(d) lodger can separately demonstrate his eligibility for public aid, the AFDC shelter allowance is increased to include his share, a principle illustrated by the Taylor case. See note 3, supra.

Appellees have attempted to justify their position by incanting the words "conclusive presumption of contribution." But it is clear that the New York regulations are based on the fair inference from the presence of the lodger in the household that the AFDC-recipient family actually needs less space for its own use than it is paying rent for. Appellees do not dispute that in the event an eligible family chooses to live as lodgers in a portion of a non-eligible person's house, the state may pay only the eligible family's pro rata share of the total rent, regardless of contribution, without offending federal law; the recipient family would be due shelter allowance only for that portion of the house they were actually using. The outcome is no different when the AFDC family uses a portion of its own premises to house a non-eligible person, whether or not that person contributes to the rent.

Prorating housing expenses among recipients and non-recipients of public aid accounts for the economies of scale that are realized when individuals live in groups; per-

individual housing costs decrease as the number of individuals living together increases. In the Hurley case, for example, Hurley, her three children, and her lodger can live at a lower per capita housing cost than can Hurley and her children alone. Thus, the New York scheme does not attribute a false duty of support or a false source of income, but rather accounts for the actual cost of housing to an AFDC-recipient family.[4]

The New York regulations have a more limited objective than those held invalid in *King* and *Lewis*. The objective of section 352.30(d) is to insure that all of the beneficiaries of an AFDC grant are entitled to enjoy it. Unlike the Alabama and California regulations, the New York regulations do not cut off all aid to families having non-eligible persons in their households. They merely prevent non-eligible persons from benefiting from free living space.[5] New York's interest in preventing non-eligible persons from sharing in AFDC benefits is coextensive with

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[4] In preparing for these appeals, the New York Department of Social Services addressed a letter to the Regional Attorney of the Social and Rehabilitation Service of the Department of Health, Education & Welfare containing a request for an opinion on the following question:

"Is a state policy of prorating a shelter allowance so as to reflect the percentage of public assistance recipients residing in a household valid under 45 CFR 233.90?"

The response of the Regional Commissioner of the Department was available a short time after these appeals were argued:

". . . HEW has permitted states to prorate shelter allowances to reflect the percentage of public assistance recipients in a household. Such a proration is not considered an assumption of income, but rather a recognition that per-individual costs decrease as the number of individuals living together increases."

[5] In *Battle* v. *Lavine*, —— App. Div. —— (2d Dep't April 22, 1974), the Appellate Division held that the regulation pro-

(footnote continued on following page)

the federal interest in allocating AFDC appropriations only to eligible persons. Section 402(a)(10) of the Social Security Act, 42 U.S.C. § 602(a)(10) (1970), states that aid must be furnished "with reasonable promptness to all eligible individuals," language necessarily implying that aid should not be furnished to non-eligible individuals.

Reversed and remanded.

OAKES, *Circuit Judge* (dissenting):

The majority decision today reverses two distinguished federal trial judges and reaches a conclusion quite contrary to that of an Appellate Division of the New York Supreme Court, and antithetical to decisions of the Supreme Court of New Jersey, and of federal district courts in Massachusetts, Indiana and Georgia.[1] It also disregards the mandates of Supreme Court decisions from *King* v. *Smith*, 392

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rating shelter allowance violated 45 C.F.R. § 233.90. Solely on the authority of the district court's decision in *Hurley* v. *Van Lare*, it rejected the proposition that the purpose of the New York regulation is to prevent non-eligible persons from benefiting from shelter allowance payments. Since we reverse *Hurley* v. *Van Lare*, we do not give any weight to the Appellate Division's holding.

[1] *Battle* v. *Lavine*, —— App. Div. ——, —— N.Y.S. 2d —— (2d Dep't Apr. 22, 1974). *Contrary to the majority's suggestion*, at note 5, the New York court's decision was not merely based *on the authority* of *Hurdey* v. *Van Lare*. One would be surprised were a high court of the soverign state of New York to determine *the purpose of a state regulation* "[s]olely on the authority of [a federal] court's decision." Majority opinion at note 5. Rather *Hurley* v. *Van Lare* was simply cited for the proposition that the federal district court had reached one of the same conclusions as the Appellate Division—that "notwithstanding the [State's] protestations

(*footnote continued on following page*)

U.S. 309 (1968), to *Shea* v. *Vialpando*, 42 U.S.L.W. 4559 (U.S. Apr. 23, 1974). As such, today's majority opinion stands nakedly—and thankfully—alone, for the majority permits a state to deprive the dependent children of a needy family of a portion of their allowances for shelter because some person—whether an unemployed adult child, a disabled (but ineligible) sister, or a male "friend"—resides in the same household. The result I think flies in the teeth of the federal law and Supreme Court decisions, disregards economic realities and is quite unjust to the needy children otherwise entitled to assistance.

The majority today finds two challenged New York regulations in conformity with the federal statute, 42 U.S.C. § 602(a)(7),[1a] and regulation, 45 C.F.R. § 233.90(a)

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that their concern is that ineligibles not receive a rental stipend, the inevitable result of the State regulation under attack is to reduce, perhaps drastically, the stipend for those who are eligible." —— App. Div. ——, —— N.Y.S.2d at ——. Other shelter allowance cases contrary to the majority decision include *Hausman* v. *Department of Institutions and Agencies*, 64 N.J. 203, 314 A.2d 362 (1974). *See also Mothers and Childrens Rights Organization, Inc.* v. *Stanton*, 371 F. Supp. 298 (N.D. Ind. 1973); *Owens* v. *Parham*, 350 F. Supp. 598 (N.D. Ga. 1972) (three-judge court); *Boucher* v. *Minter*, 349 F. Supp. 1240 (D. Mass. 1972) (three-judge court), all of which are unmentioned by the majority opinion.

[1a] 42 U.S.C. § 602 reads, in pertinent part:

(a) A State plan for aid and services to needy families with children must . . .

(7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same house as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income.

(1973).[2] The first challenged regulation, 18 NYCRR § 352.31(a)(3)(iv),[3] is New York's administrative soft shoe around *King* v. *Smith, supra.* New York defines a man who lives with a woman to whom he is not married

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[2] 45 C.F.R. § 233.90 Factors specific to AFDC.

(a) *State plan requirement.* A State plan under title IV-A of the Social Security Act must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extend [sic] that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. In establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions.

[3] 18 NYCRR § 352.31(a) . . .

(3) When a female applicant or recipient is living with a man to whom she is not married, other than on an occasional or transient basis, his available income and resources shall be applied in accordance with the following:

. . . (iv) When the man is unwilling to assume responsibility for the woman or her children, and there are no children of which he is the acknowledged or adjudicated father, he shall be treated as a lodger in accordance with section 352.30(d).

and for whom he does not assume financial responsibility as a "lodger." In *King*, Alabama had defined a man who engaged in the same conduct a "parent." In *King* the result of that definition was to disqualify the AFDC *child* from receiving any benefits; in the present case the result of New York's definition of the man as a "lodger" is also to disqualify the AFDC child, although only from a portion of his benefits. Thus by New York's cleverness in changing a "parent" to a "lodger," it has managed, with the aid of today's decision, to accomplish what a number of other states have not—the reduction in the AFDC's child's benefits on the basis of the mother's living arrangements. *See, e.g., Lewis* v. *Martin*, 397 U.S. 552 (1970); *King* v. *Smith, supra; Rosen* v. *Hursh*, 364 F.2d 731 (8th Cir. 1972); *Reyna* v. *Vowell*, 470 F.2d 494 (5th Cir. 1972); *Boucher* v. *Minter*, 349 F. Supp. 1240 (D. Mass. 1972) (three-judge court); *Owens* v. *Parham*, 350 F. Supp. 598 (N.D. Ga. 1972) (three-judge court); *Gaither* v. *Sterrett*, 346 F. Supp. 1095 (N.D. Ind.) (three-judge court), *aff'd*, 409 U.S. 1070 (1972). At least one state has been frustrated twice, *see* X v. *McCorkle*, 333 F. Supp. 1109 (D.N.J. 1970), *aff'd sub nom. Engleman* v. *Amos*, 404 U.S. 23 (1971); *Hausman* v. *Department of Institutions and Agencies*, 64 N.J. 203, 314 A.2d 362 (1974). And, interestingly, the majority, by not striking down this regulation, runs directly counter to its *own* assessment of what *King* stands for—"that Congress did not intend [AFDC] to be a lever in the hands of state legislators to compel compliance with local standards of moral conduct."

This determination may not be so harsh as it sounds, however, for it seems plain enough that the three-judge court should find this regulation unconstitutional. The definition of a "lodger" as a man who lives with a woman to whom he is not married, while not defining a woman who

lives with a man as such, is so patently a violation of equal protection on the basis of sex, *see Frontiero* v. *Richardson,* 411 U.S. 677 (1973); *Reed* v. *Reed,* 404 U.S. 71 (1971), that, whether sex is regarded as a "suspect" classification or not, the State is unlikely to be able to find a justification for the classification here.

The other regulation under challenge here, 18 NYCRR § 352.30(d),[4] is more significant—both because its cleverness makes it more insidious and because, even absent the other regulation defining "lodger," this regulation also permits the reduction of recipient children's benefits as a result of whom the mother allows to live in the house, the apartment or tenement as the case may be. This regulation provides that if a lodger pays $15 a month or more, that amount will be considered income to the recipient family.[5] If, however, the lodger pays nothing, or less than $15, then a pro rata share of the shelter allowance, including fuel for heating, will be deducted from the *family's*

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[4] 18 NYCRR § 352.30(d):

A non-legally responsible relative or unrelated person in the household, who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the lodger, the amount in excess of $15 per month shall be considered as income; for such boarding lodgers, the amount in excess of $60 per month shall be considered as income. In the event a lodger does not contribute at least $15 per month, the family's shelter allowance including fuel for heating, shall be a pro rata share of the regular shelter allowance.

[5] This actual contribution, like all other income, will result in a reduction of the family's benefits under the theory that welfare will only provide that money necessary to bring a family up to its level of need. This section of the regulation is unchallenged and, in my view, comports entirely with the intent of the federal statute and regulations.

benefits.[6] This is the regulation which resulted in plaintiff Taylor and her six-year-old child receiving an eviction notice because a reduced shelter allowance made it impossible to meet the rent. Plaintiff Taylor's "lodger"? Her disabled sister. This is the regulation which requires plaintiff Otey to throw her unemployed, ineligible-for-welfare, 23-year old son out on the street, because if he lives in the home their shelter allowance will not be sufficient to pay the rent, while if he moves out the State will pay the full amount.[7]

The majority concedes that if this regulation *conclusively presumed* the availability of income from the lodger and reduced the AFDC child's benefits on that basis, then the regulation would be unlawful under the HEW regulation. Rather than find such a presumption inherent in the regulation, however, the majority advances two independent

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[6] Those on welfare are sure to learn quickly that they will maximize their benefits by *claiming* that they receive $15 a month from their lodger, resulting in only a $15 diminution of their shelter allowance. In this way they will lose only $15 of benefits, rather than a pro rata share, which normally would be more. Thus, in Hurley's case the pro rata reduction was $30, although she received no contribution from her male friend. In Taylor's case the pro rata reduction was $55, although she received no contribution from her sister. In Otey's case the pro rata reduction was $48.35 although she received no contribution from her son. One may wonder about the rationality of a system which deducts $55 from someone receiving no contribution, but only $15 from someone receiving a $15 contribution.

[7] Compare this result with the federal purpose "to help maintain and strengthen family life," 42 U.S.C. § 601, and the federal requirement that states provide services "for the purpose of preserving . . . the family. . . ." 42 U.S.C. §§ 602(a)(13), 602(a)(14), 606(d). *See Shea* v. *Vialpando*, 42 U.S.L.W. 4559, 4560 (U.S. Apr. 23, 1974). *See also Rodriquez* v. *Vowell*, 472 F.2d 622, 626 (5th Cir.), *cert. denied*, 412 U.S. 944 (1973).

bases or objectives of the regulation as compatible with the federal law and regulation. Each of them is in my view wholly lacking in sufficiency.

The first allowance "basis" for the regulation found by the majority is "the fair inference from the presence of the lodger in the household that the AFDC-recipient family actually needs less space for its own use than it is paying rent for." While "it is clear" to the majority that this inference is the basis of the regulation, this was not the basis claimed by the State either in the court below or in this court.* Rather this "basis" for the regluation lies in my colleagues' fertile imagination. If this case were here now upon an equal protection challenge, then the majority might properly try to find a reasonable basis for the classification. *Dandridge* v. *Williams*, 397 U.S. 471 (1970). But this is not an equal protection challenge. It is a challenge under a federal statute and regulation which through several years and many cases of judicial scrutiny have taken on substantive requirements well beyond those of the Equal Protection Clause. Primary among those requirements is that *a child's resources are to be measured in actuality, not on the basis of a presumption. See, e.g., Shea* v. *Vialpando*, 42 U.S.L.W. 4559, 4562 (U.S. Apr. 23, 1974). The majority acknowledges the federal prohibition of a presumption of support. Support, however, is just one type of resource affecting a family's need; the amount of available living space is another. Yet in place of a presumption of support, the majority substitutes a *conclusive presumption that*

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* It would indeed be hard to maintain that this is the basis for the rule, because as soon as the "lodger" moves out, the full shelter allowance is restored. If the presence of the lodger demonstrated excess space, as maintained by the majority, then his moving out would not be a reason to resume full shelter payments.

whenever there is a "lodger" the family has more space than it needs. As such, it may well be contrary to fact: the older brother may be sharing a single bed with a younger one; the disabled sister may be sleeping on the couch.

Labeling the New York regulation a "fair inference" does not change its conclusive nature where a showing contrary to the inference will not affect the shelter allowance reduction; here the only fact considered by the State in the fair hearing is the presence or absence of a lodger, not the amount of space in the apartment. If the regulation provided only for a rebuttable presumption, whether of payments by the lodger or of excess space, there might well be a different question.[9] Thus, the majority, in upholding the regulation on this basis, creates a conclusive presumption regarding the child's needs which has the effect of reducing the AFDC child's benefits. This directly contravenes

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[9] In *Mothers and Childrens Rights Organizations, Inc.* v. *Stanton*, —— F. Supp. ——, Civ. No. 72 F 69 (N.D. Ind. 1973), the court found regulations almost identical to New York State's in conflict with the federal law and regulations *as applied*. The court found that making a presumption of support, if rebuttable, was lawful, but if the presumption was irrebuttable in practice, then it was unlawful. *Accord*, *Hausman* v. *Department of Institutions and Agencies*, 64 N.J. 203, 314 A.2d 362 (1974). In *Owens* v. *Parham*, 350 F. Supp. 598 (N.D. Ga. 1972) (three-judge court), the court also found a presumption in analytically identical regulations, upheld the regulations on their face, but found them *unconstitutional* as applied, because recipients whose shelter allowances were reduced as a result of non-eligibles residing in the household were not given an opportunity to rebut the presumption. The Supreme Court in *Shea* v. *Vialpando*, 42 U.S.L.W. at 4564, suggested a similar solution in finding a uniform allowance for work-related expenses unlawful under the Act. The Court said that if there were provided an opportunity for individualized consideration where the allowance was not sufficient, then the allowance would not be unlawful.

the HEW regulation which provides:

> [A state plan must] [p]rovide that the determination of need and the amount of assistance for all applicants and recipients will be made on an *objective and equitable basis.* . . .

45 C.F.R. § 233.20(a)(1) (emphasis added). The majority's conclusive presumption of the child's need, or lack of it, also violates what seems to me the clear import of *Shea* v. *Vialpando, supra; King* v. *Smith, supra; Lewis* v. *Martin, supra;* and HEW regulation, 45 C.F.R. § 233.90(a), that a family's resources (be they income or amount of living space) be determined by what it *actually* has or receives, not by presumptions or inferences.[10] If such a presumption be the basis for the New York regulation,[11]

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[10] In *Shea* v. *Vialpando, supra,* the Court declared a Colorado uniform allowance for work-related expenses incompatible with the Social Security Act, saying:

> From the inception of the Act, Congress has sought to ensure that AFDC assistance is provided only to needy families, and that the amount of assistance actually paid is based on the amount needed in the *individual* case after other income and resources are considered.

42 U.S.L.W. at 4562 (emphasis original).

[11] New York's regulations requiring initial and continuing investigations into need and eligibility demonstrate both its general adherence to *the rule of determining actual, individual needs and resources* and the lack of necessity for a presumption regarding excess living space. The New York regulations deal in some detail with the investigations to be made both initially, 18 NYCRR §§ 351.1-.6, and on a continuing basis, 18 NYCRR §§ 351.20-.21. The *actual* resources are investigated in depth. 18 NYCRR § 351.2(e). Among the facts to be determined by documents, personal observation, personal and collateral interviews and other means are

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it is in violation of federal law, and the regulation must fall.[12]

An "objective" of the New York regulation, according to the majority, "is to insure that all of the beneficiaries of an AFDC grant are entitled to enjoy it." Clearly the State is not required, or for that matter allowed, to extend AFDC benefits to ineligible persons. The question, however, is whether this regulation serves to keep AFDC benefits from the ineligible, or whether instead it unlawfully withholds benefits from those rightfully entitled to it—dependent children in need and their responsible families. The fallacy underlying the majority's view, and the argument of the State on this issue, is that the lodger is not a "beneficiary" of the AFDC grant either in law or fact. The lodger is rather the beneficiary of the AFDC family's generosity, and more likely that of the AFDC children's mother. If a lodger is not present in the house-

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the residence and family composition. Each member of the household is investigated as to age, relationship to other members, marital status, employment, and the like. 18 NYCRR § 351.2(c). The place of residence must itself be specifically investigated and approved. 18 NYCRR § 351.3. Every six months all variable factors of need must be reconsidered, re-evaluated, and verified. 18 NYCRR § 351.21 (b)(2). In short, it is absurd to create an administrative presumption concerning resources of income or space, when the actual information is on file and subject to immediate verification. Let it be remembered that New York justified its "home visits" in *Wyman* v. *James*, 400 U.S. 309 (1971), by its claimed need to gather this very type of information.

[12] This conclusive presumption, which the majority styles a fair inference, is in any case in violation of due process. *See Owens* v. *Parham*, *supra*. *See also United States Department of Agriculture* v. *Murry*, 413 U.S. 508 (1973); *Vlandis* v. *Kline*, 412 U.S. 441 (1973); *Stanley* v. *Illinois*, 405 U.S. 645 (1972); *Heiner* v. *Donnan*, 285 U.S. 312 (1932).

hold, the family receives a rent allowance determined by the State to be proper for the family. If a lodger then is invited into the household, he would not receive any benefit from the AFDC grant, the entire amount of which the family is entitled to without him; he is rather a recipient of that charity which the family wishes to extend *from its own resources.*[13] He is there at the family's forbearance

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[13] To carry out the majority's analysis, when the welfare mother puts a dollar bill in the collection plate on Sunday, the church is "sharing in AFDC benefits," and presumably the majority would uphold a state regulation which provided for withholding from the AFDC grant a sum equal to any donations to charity. The supposed justification remains the same—the State provides AFDC grants for the support of the dependent child and not for the benefit of ineligibles, and the fallacy is the same. Rather the State provides the family with what it determines to be the necessary resources, but then the resources belong to the family to utilize as it best sees fit. Absent this element of choice a welfare state would be a police state.

If the State believes that the resources are being misused to the detriment of the child, it has a vast battery of provisions which it may use to protect the child. Initially and primarily there are counseling services for the family. 18 NYCRR §§ 386.1-.10. This may range from simple caseworker counseling to specialized psychiatric help. Where a recipient has demonstrated an inability to handle the cash resources provided, restricted payments may be made rather than the normal unrestricted payments. Soc. Services Law § 350-a; 18 NYCRR § 381.3(a). For instance, if the head of the household wastes money so that rent payments cannot be met, the State may undertake to pay the shelter allowance directly to the landlord. Soc. Services Law § 143-b; 18 NYCRR § 381.3(c). The overall payments may be made to a person other than the head of household or to an agency on behalf of the eligible child. 18 NYCRR § 381.8. A homemaker may be provided in the house for the family. 18 NYCRR § 387.2. Intensive family casework services are available. 18 NYCRR §§ 456.1-.7. In extreme cases the

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or pleasure and he has no right to remain. He receives nothing from the State, and when the family's shelter allowance is reduced, nothing is taken from him. He continues to live in the household at the pleasure of the family.

Clearly what the State is doing is not keeping welfare funds from the ineligible by this regulation.[14] Rather it seeks to punish the welfare family for using its own resources in a manner of which the Commissioner disapproves in advance in every case. Whether the Commissioner is attempting to enforce the "middle class morality" mentioned by the majority, or just trying to save money any way he can, the federal statute and regulations, and the unanimous case law forbid the State from enforcing its predilections *which are irrelevant to the welfare of the child*[15] by depriving the eligible child of its needs. *See, e.g., Carleson* v. *Remillard*, 406 U.S. 598 (1972); *Townsend* v. *Swank*, 404 U.S. 282 (1971); *Lewis* v. *Martin, supra; King* v. *Smith, supra; Doe* v. *Ellis*, 350 F. Supp. 375 (D.S.C. 1972) (three-judge court); *Saddler* v. *Winstead*, 332 F. Supp. 130 (N.D. Miss. 1971); *Doe* v. *Schmidt*,

(*footnote continued from preceding page*)

children may be removed from the home and placed in foster care. Soc. Services Law § 358-a; 18 NYCRR § 450.3. And, of course, the whole gamut of procedures relating to neglected children is available to the State. Soc. Services Law §§ 374, 397, 398; Penal Law §§ 260.05, .10; Family Court Act § 1011-74.

[14] If the lodger were receiving welfare funds for which he was ineligible, he could be prosecuted for welfare fraud. Soc. Services Law § 145.

[15] Neither the State nor the majority has asserted that the regulation in question in any way safeguards the welfare of the eligible child. Nor does it appear how by reducing the child's benefits, which in one of the cases before us resulted in a notice of eviction, the child's welfare would be enhanced.

330 F. Supp. 159 (E.D. Wis. 1971) (three-judge court); *Doe* v. *Shapiro*, 302 F. Supp. 761 (D. Conn. 1969) (three-judge court), *appeal dismissed*, 396 U.S. 488 (1970). And that is exactly what is being done here.

To repeat, to reduce the shelter allowance of an AFDC family by virtue of the presence in the home of a non-paying lodger does not deprive the lodger of any benefits —only the family which allows him to stay can do that— but rather deprives the needy family, and especially the needy child who is the object of the AFDC program, of them.

If the State believes that the non-paying lodger should not get a "free ride," the State may legislate or proceed against the lodger, but should it be permitted to deprive *the needy child?* The State may attempt to obtain reimbursement from the lodger for the use of the family's resources,[16] but should it be able to punish the child because the head-of-household does not require the lodger to pay for his shelter? *Cf. Doe* v. *Schmidt, supra; Doe* v. *Shapiro, supra.*

There are only two other points made by the majority requiring passing mention. First, there is a suggestion that an "economy of scale" operates in the sense that the per capita housing cost decreases when there is a lodger. It is nonsense, however, to say that the cost of housing to the recipient family decreases when there is a *non-paying* lodger. Moreover, an economy of scale does not reduce the *total* cost of anything, and yet here, where the recipient family is legally and factually responsible for the total rent bill, the State is providing a *smaller* total allowance

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[16] The State already requires the applicant for welfare to assign certain assets and to utilize all resources for the production of income. *See* 18 NYCRR §§ 352.15(d), 352.23, 352.25, 352.27, 352.28.

although the lodger contributes nothing. An economy of scale would operate only if the lodger were presumed to pay his pro rata share. But such a presumption would be clearly unlawful, as the majority concedes and 45 C.F.R. § 233.90(a) provides. The presence of a lodger is, finally, irrelevant to the rent the family pays. A certain rent is due and payable; if the State reduces the rent allowance, the difference will either be made up out of food budget—literally out of the needy child's mouth—or it will not be made up, resulting in a notice of eviction. Plaintiff Taylor with her eviction notice would surely laugh, although perhaps a little bitterly, at the majority's suggestion that by housing her destitute and disabled sister the family's "actual cost of housing" was reduced.

Finally, in a footnote, the majority quotes from a letter from HEW in response to questions from the State. The suggestion of the footnote is that HEW has taken a position on the question before us. To the contrary, however, in that same letter HEW acknowledged that it approves both plans like New York's and those which grant full shelter allowance despite the presence of non-recipients in the household. In other words, HEW here, just as it did prior to *King* v. *Smith, supra,* has not resisted a state's attempt to evade its own regulations and the federal statutes. *See also Shea* v. *Vialpando,* 42 U.S.L.W. at 4563 n. 11.

I would affirm the judgments below, because, as Judge Bauman said,

> the inevitable result of these regulations is to reduce, perhaps drastically, the stipend for those who are eligible. . . . This devastating reduction means in practice that rental payments must be met out of that portion of the welfare stipend allotted for food and clothing.

Hurley v. *Van Lare*, 365 F. Supp. 186, 195 (S.D.N.Y. 1973). Because the regulation denies the eligible child his basic needs for no reason related to the purpose of the federal statute, it violates that statute and the implementing regulations.[17]

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[17] The majority's decision in its own words is premised upon what the majority concludes the *New York regulations* to "imply" or to be "based on," or their "objective." The Appellate Division in *Battle* v. *Lavine, supra,* the highest state court to have spoken on the issue, has explicitly rejected the interpretation of the majority here. Whether this court should be bound by the interpretation of state law made by *Battle* is a question not argued or briefed to us as *Battle* was decided after argument before this court. Nevertheless, it is clear that the majority decision, based as it is on an interpretation of state law, does not preclude New York courts from reaching an opposite conclusion, as the *Battle* court did, as to the conformity of the state regulations with the federal statute and regulations.

Order Denying Petition for Rehearing.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 18th day of June, one thuosand nine hundred and seventy-four.

Docket Nos. 73-2671
73-2731

ANNIE TAYLOR, et al.,

Plaintiffs-Appellees,

v.

ABE LAVINE, et al.,

Defendants-Appellants.

ROSE HURLEY, et al.,

Plaintiffs-Appellees,

v.

BARRY VAN LARE, et al.,

Defendants-Appellants.

A petition for rehearing containing a suggestion that the action be reheared in banc having been filed herein by counsel for the plaintiffs-appellees, and a poll of the judges

in regular active service having been taken and there being no majority in favor thereof,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied. Judges Feinberg and Oakes dissent.

IRVING R. KAUFMAN
Chief Judge
IRVING R. KAUFMAN

PROCEEDINGS BEFORE THE THREE-JUDGE COURT FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK IN *HURLEY* v. *VAN LARE*, 73 CIV. 3423, AND *TAYLOR* v. *LAVINE*, 73 CIV. 699, ON REMAND FROM THE COURT OF APPEALS FOR THE SECOND CIRCUIT.

Additional Regulatory History of 18 NYCRR §§ 352.30(d), 352.31(a)(3)(iv) and Related Regulations Submitted in Response to Notice to Produce Directed to State Defendants.

Bulletin No. 134d page No. 35

July 2, 1965

Section 353.3

(c) *For nonlegally responsible relatives*

(1) When a self-maintaining non-legally responsible relative is a member of the household and when he is willing to have his income verified and applied, his needs and those of his spouse and minor children shall be estimated in accordance with the MILS established by the department. He should be asked to contribute 50 per cent of the surplus income to the support of the applicant or recipient. [See Appendix C.]

(2) When, however, the relative will not contribute to that extent, or is unwilling to have his income verified, and when the applicant or recipient lives in the home of the relative and when, in the opinion of the agency, the home should be preserved for him, the agency may meet those needs which the relative is unwilling to meet. Ordinarily only those items which entail additional expense to the relative should be included. However, if essential to the maintenance of the home for the recipient, prorated shelter costs or a board and room rate may be allowed. The boarding rate may include payment for exceptional personal services if they cannot otherwise be provided.

(3) When the relative will not contribute to the extent indicated in paragraph (1) above, and when the relative lives in the home of the re-

cipient, he should be expected to at least pay to the recipient a commercial rate of room and board. This policy applies also to a friend living with a recipient.

(4) A nondependent relative receiving an ADC grant for a dependent child or minor shall be budgeted according to paragraphs (1) and (2) above, except that such grant may not be paid on a board and room basis but must be based on verified shelter items and agency schedules.

Bulletin No. 134d page No. 31

December 17, 1965

Section 353.1 The budgetary method

(a) The budgetary method shall mean the balancing of available resources against the estimate of regularly recurring need, in order to determine the existence of a budget deficit. When the estimate of regularly recurring need exceeds the available resources, the difference shall be known as a budget deficit. When the available resources exceed the estimate of regularly recurring need, the difference shall be known as a budget surplus.

(b) The budgetary method shall be applied to the individual case to determine eligibility and the amount of the grant.

(c) An individual or family shall be deemed "in need" when a budget deficit exists or when the budget surplus is inadequate to meet one or more non-budgeted special needs required by the case circumstances and included in the standards of assistance.

(d) In establishing the budget on which determination of need is based, all items of basic maintenance and all

items of special need required by case circumstances shall be included.

(1) Where investigation has been completed and need established on a continuing basis, the recurring cash grant shall be the full budget deficit, or it shall be the full budget deficit less the amounts which are to be met by special grants.

[*Comment:* Carrying charges on property may be met by special grants at the time taxes, interest on mortgage, water rent and fire insurance become due and payable.]

(2) In cases where need is deemed to be temporary, (less than three months) as in many HR cases, the grant shall be limited to those basic maintenance and/or special items for which there is immediate need.

(e) Special grants shall be made to meet: non-budgeted special needs included in the standards of assistance; emergency needs prior to completion of investigation of initial eligibility; and to supplement the regular grant because of unanticipated increase in need or decrease in income.

(f) For those items for which the allowance is based on age, the attained age at the time of the effective date of opening, reopening, reauthorization or change in grant shall be used.

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Section 353.2 Persons included in the budget

(a) For budgetary purposes the agency shall include in its estimate of need and application of income all persons applying for or receiving public assistance

and care and living as a unit within the same household.

(b) Self-maintaining legally responsible relatives in the household, including a minor child of an applicant or recipient, shall not be included in the budget, but shall have their ability to contribute determined in accordance with pertinent regulations.

(c) A lodger or boarder shall not be included in the budget. However, allowance shall be made for those items of expense incurred by reason of his presence in the household including $38 for his food. The amount paid by such boarder shall be applied as income to the household.

[*Comment:* (1) The spouse and the parent of a minor child for whom public assistance is requested or received shall be budgeted in accordance with section 353.3 (a) below.

(2) A self-maintaining minor between the ages of 16 and 21 living with his parent or parents who are receiving ADC or HR shall be budgeted in accordance with section 353.3 (b) (5).

(3) Ability of other self-maintaining members of the household to contribute shall be determined in accordance with section 353.3(c).

(4) For budgeting a child boarded in a public assistance household, see section 352.7 (b) (1)(ii)(*b*)]

Additional Regulatory History of 18 NYCRR §§ 352.30(d), 352.31(a)(3)(iv) and Related Regulations.

Section 353.3 Estimate of need and application of income

(a) *For applicant or recipient*

(1) The estimate of need for any applicant or recipient shall include all items of basic maintenance and items of regularly recurring special need specified in Section 352.5 of these regulations for persons in the circumstances under which such items are allowed. The amount to be included for each item of basic maintenance and for each item of special need shall be the appropriate amount provided in the allowance schedule for such item. However, the schedule allowance for items of basic maintenance or special need may, if insufficient, be adjusted when the individual circumstances are such as to require some modification of the scheduled amount and these circumstances have been verified and recorded. To the extent that an item of basic maintenance or special need is otherwise provided, it shall not be included in the estimate of need, but the manner in which such item is provided shall be recorded.

page No. 32

[*Note:* See Section 352.7—Utilization of Resources —subdivisions (b) (1) (ii) (*d*), (*e*) (*f*) and (*g*)]

(2) All income possessed by an applicant or recipient, who is living with a relative other than a spouse or minor child, shall ordinarily be applied first against his own needs, with any balance applied against the needs of those for whom he is legally responsible. On an exceptions basis income possessed by such an applicant or recipient may be pro-rated against the needs of

another related member of the household. [See subdivisions (b) and and (c) of this section below.]

(3) When a person who is possessed of income is not applying for public assistance or care for himself, but when he is living with a spouse or a minor child for whom public assistance or care is requested, the needs of such person shall be estimated as if he were applying for public assistance and his income shall be similarly applied. This policy shall ordinarly be applied even though there is no legal marriage, if the adults are generally regarded as man and wife.

(b) *For legally responsible relatives*

(1) When a self-maintaining legally responsible relative, other than the spouse or the parent of a minor [up to 21 years] for whom public assistance is requested or received, is in the same household with an applicant or recipient, his ability to support shall be determined by deducting from his gross income his needs and those of his spouse and minor children, estimated in accordance with the moderate income level standard established by the department. [See Appendix B] In considering the availability of other resources of the relative for support, allowance may be made for maintaining reserves sufficient to meet anticipated needs. The surplus of income over needs shall be deemed available for support except that when it is verified that the relative is currently meeting exceptional, essential needs not included, or not

adequately included in the moderate income level standard, an allowance may be made for such needs. The self-maintaining members of the household shall ordinarily be budgeted as a unit in applying the MILS, with any necessary adjustment for more than one earner and with income tax allowed as verified.

(2) When the relative lives in the home of the applicant or recipient he shall be expected to pay to the recipient his share of shared items plus food if he eats his meals at home. His surplus income, as computed in paragraph (1) above shall be deducted from the estimated needs of the applicant or recipient.

(3) When the legally responsible relative of an applicant or recipient who has been found able to support fails to do so, an emergency grant shall be made to meet urgent needs pending action to enforce support.

page No. 34

(4) When the self-maintaining spouse of a recipient, or the parent of a minor receiving public assistance, resides outside the household, his needs and those of his dependents who reside with him shall ordinarily be estimated in accordance with public assistance standards described in subdivision (a) above, plus an adjustment allowance of 25 percent of the combined needs of his household.

(5) Except for youths employed under Titles I or II of the Federal Economic Opportunity Act, a self-maintaining minor between the ages of 16 and 21 living with one or both parents receiving

ADC or HR shall have his needs estimated in accordance with public assistance standards. If such minor refuses to have his income verified and/or his surplus income applied against the needs of his parent or parents he shall be removed from the case count. The budget deficit of the recipient shall be reduced by an amount equal to such minor's share of maintenance and his personal need. His obligation to contribute support for his parents shall be determined by applying the MILS.

(6) When a self-maintaining legally responsible relative, other than the spouse or parent of a minor, lives outside the household of the applicant or recipient, his ability to support the applicant or recipient shall be determined by application of the MILS standard established by the department. Fifty percent of the surplus income shall be considered available for support except if modification is deemed appropriate.

(c) *For non-legally responsible relatives*

(1) When a self-maintaining non-legally responsible relative is a member of the household and when he is willing to have his income verified and applied, his needs and those of his spouse and minor children shall be estimated in accordance with the MILS established by the department. He should be asked to contribute 50 per cent of the surplus income to the support of the applicant or recipient. [See Appendix B.]

(2) When, however, such relative is unwilling to contribute to the extent indicated above, or is

unwilling to have his income verified, and when the applicant or recipient lives in the home of such relative, the agency may meet those needs which the relative is unwilling to meet. Ordinarily only those items which entail additional expense to the relative should be included. However, if essential to the maintenance of the home for the recipient, prorated shelter or a board and room rate may be allowed. The boarding rate may include payment for exceptional personal services if they cannot otherwise be provided.

page No. 35

(3) When such relative is unwilling to contribute to the extent indicated in paragraph (1), and when the relative lives in the home of the recipient, the budget deficit of the recipient shall be reduced by an amount equal to the difference between the prevailing commercial rate for room and board and the cost attributable to his living in the home. The provisions of this paragraph shall apply also to a friend living with the recipient.

(d) *For combined household, legally and non-legally responsible relatives*

(1) When a household consists of persons receiving asistance and a self-maintaining group which includes both legally and non-legally responsible relatives, and when the income is possessed solely by the legally responsible relative, the ability to support shall be determined as in subdivision (b) of this section above. When the income is possessed in whole or in part by the non-

legally responsible relative, the needs and income shall be budgeted as in subdivision (c) of this section above.

(2) When a household consists of dependent persons and a self-maintaining person who is legally responsible for part but not all of the dependent persons, his ability to support those for whom he is legally liable shall be determined in accordance with subdivision (b) of this section above.

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Bulletin No. 134 page No. 39

June 5, 1969

(b) A non-legally responsible relative in the household who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. A lodger or boarding lodger shall not be included in the budget. The amount of room and board which he pays shall be verified and that which is in excess of $55 a month shall be considered as income to the family. The amount paid by a lodger shall be verified and that which is in excess of $12 a month shall be considered as income to the family.

[NOTE: Rent, as paid, is budgeted for the assistance group, even though in excess of shelter schedule allowance, when lodging is furnished as in (a) or (b) above. Income received will, in effect, reduce shelter costs for assistance group by application of net income.]

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Additional Regulatory History of 18 NYCRR §§ 352.30(d), 352.31(a)(3)(iv) and Related Regulations.

Bulletin No. 134 page No. I-3
June 1, 1970

(c) A non-legally responsible relative in the household who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the lodger, the amount in excess of $15.00 per month shall be considered as income; for such boarding lodgers, the amount in excess of $60 per month shall be considered as income.

[NOTE: Rent, as paid, is budgeted for the assistance group, even though in excess of shelter schedule allowance, when lodging is furnished as in subdivision (a) or (c) above. Income received will, in effect, reduce shelter costs for assistance group by application of net income.]

Interrogatories to Defendant Lavine.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROSE HURLEY, individually and on behalf of her minor dependent children, DOREEN HURLEY, JAMIE HURLEY and JOHN HURLEY, and on behalf of all other persons similarly situated,

Plaintiffs,

against

BARRY VAN LARE, individually and in his capacity as Acting Commissioner of the Department of Social Services of the State of New York,

ABE LAVINE, individually and in his capacity as Commissioner of the Department of Social Services of the State of New York,

LOUIS P. KURTIS, individually and in his capacity as Commissioner of the Department of Social Services of the County of Westchester,

Defendants.

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72 Civ. 3423

(A.B.)

To: HONORABLE LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Two World Trade Center
New York, New York 10047
Att: Judith Gordon, Esq.

GERALD HARRIS, Esq.
County Attorney
County Office Building
White Plains, New York 10601

Interrogatories to Defendant Lavine.

The plaintiffs in the above entitled action request that defendant Lavine answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. The exact or approximate number of persons and families in New York State who have had their grants of public assistance terminated, reduced, or suspended because of the operation and enforcement of 18 NYCRR §§ 352.30(d) and 352.31(a)(3) in (a) 1971, (b) 1972, (c) 1973, and (d) 1974.

2. If the exact or approximate amount of the persons and families described in question one (1) are unknown and cannot be ascertained, state whether the amounts exceed (a) 500 (b) 1,000, (c) 5,000, (d) 10,000, (e) 25,000, (f) 50,000, (g) 100,000 persons and families for each of the years requested.

3. State the total number of persons and families in New York State who have had their grants of public assistance terminated, reduced, or suspended because of the operation and enforcement of 18 NYCRR §§ 353.30(d) and 352.31(a)(3) since the date of the promulgation of these regulations.

4. If the exact or approximate number of persons and families described in question three (3) are unknown and cannot be ascertained, state whether the amount exceeds (a) 1,000, (b) 5,000, (c) 10,000, (d) 25,000, (e) 50,000, or (f) 100,000 persons and families.

5. State the exact or approximate number of persons and families receiving public assistance who reside in the State of New York and who presently reside, or who at the last date for which this information can be ascertained re-

sided, with a non-legally responsible person who is not receiving public assistance.

6. If the exact or approximate number of persons described in paragraph five (5) cannot be ascertained, state whether this amount exceeds (a) 1,000, (b) 5,000, (c) 10,000, (d) 25,000, (e) 50,000, or (f) 100,000 persons and families.

PLEASE TAKE NOTICE that a copy of the answers to the above interrogatories must be served upon the undersigned within 30 days after service of these interrogatories.

Dated: May 21, 1974, White Plains, New York.

MARTIN A. SCHWARTZ
THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY

By: Martin A. Schwartz
of Counsel
Attorneys for Plaintiffs

Defendant Lavine's Answers to the Interrogatories.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Patrick T. Kelly, Associate Commissioner of the New York State Department of Social Services, answers as follows to plaintiffs' interrogatories:

1. As an answer to Interrogatory No. 1: The New York State Department of Social Services keeps no records containing the number of reductions, terminations or suspensions of assistance made pursuant to 18 NYCRR 352.30(d) and 352.31(a)(3).

2. As an answer to Interrogatory No. 2: It is estimated that the total number of AFDC families residing in New York State who have had their grants of public assistance reduced pursuant to 18 NYCRR 352.30(d) is over 10,000 for each year listed. This estimate utilizes an assumption that one half of the AFDC families which are components of a household containing a non-PA recipient fall in the class of persons affected by 18 NYCRR 352.30(d) as opposed to 352.3(c). No effort was made to differentiate between those persons affected by 352.30(d) and 352.31 (a)(3), since, in terms of this lawsuit, such differentiation would be specious.

3. As a response to Interrogatory No. 3: See response to Interrogatory 1.

Defendant Lavine's Answers to the Interrogatories.

4. As a response to Interrogatory No. 4: The estimated total number of affected families is 25,000, subject to the qualifications stated in Response No. 2.

5. As a response to Interrogatory No. 5: There are approximately 26,900 AFDC cases in the state of New York in which there is a non-legally responsible person residing in the household who is not receiving public assistance. This Department has no records which would indicate the number of home relief cases involving recipients residing with non recipients.

6. As a response to Interrogatory No. 6: See response to Interrogatory No. 5.

(Sworn to by Patrick T. Kelly, Associate Commissioner for Income Maintenance, June 22, 1974.)

Order to Show Cause for Order Granting Intervention on Behalf of Francesca Aloise.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ANNIE TAYLOR, et al.,

Plaintiffs,

against

ABE LAVINE, et al.,

Defendants,

FRANCESCA ALOISE, individually and on behalf of her minor son, MARIO ALOISE, and on behalf of all others similarly situated,

Proposed Intervenor-Plaintiff.

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73 Civ. 699

Upon the Affidavit of Francesca Aloise and her Proposed Intervenor's Complaint, it is

ORDERED, the defendants herein show cause before a three judge panel of this Court at a Term to be held at the United States Courthoue, Foley Square, New York, New York, Room , on the 26th day of June, 1974, at 10:30, or as soon thereafter as counsel can be heard why an order should not be made herein,

Granting the motion of proposed intervenor-plaintiff Francesca Aloise,

(a) Pursuant to Rules 23 and 24 (b) of the Federal Rules of Civil Procedure, to intervene in this action as a named party plaintiff.

Affidavit of Francesca Aloise in Support of Order to Show Cause.

SUFFICIENT CAUSE THEREFORE APPEARING, LET service of a copy of this order, together with the paper appended hereto, on all parties and each member of the three judge court before 5 P.M. the 24th day of June, 1974 be deemed sufficient.

/s/ JACK B. WEINSTEIN
United States District Judge

Dated: June 21, 1974
Brooklyn, New York

Affidavit of Francesca Aloise in Support of Order to Show Cause.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

FRANCESCA ALOISE, being duly sworn, deposes and says that:

1. I am a citizen of the United States and of the State of New York.

2. I live with my two sons at 1818—81st Street, Brooklyn, New York, Kings County, New York. The apartment in which we live has four rooms. I have one bedroom and my sons share the other bedroom.

3. I received public assistance for myself and two children until about February 1974. I am presently receiving

assistance for myself and my son, Mario. Our grant includes only two-thirds of the rental costs.

4. On or about November 12, 1973 the City Department sent me a Notice of Intent to Reduce my grant. The Notice stated: "We will reduce your budget as your son is working." The notice also gave a proposed budget which would keep my son, Carmine in my grant but would subtract all of his earnings, thereby requiring him to support myself and Mario. I requested a "fair hearing" to challenge the City's determination. After the "fair hearing" my grant was reduced; taking Carmine out of the budget and allowing only two-thirds of the rent.

5. Carmine was at that time, and is presently working as an apprentice to an electrician. He has told me that he does not intend to contribute any of his earnings for my support or for Mario's. He does not belief it is his duty and says he does not have enough money to do so.

6. The rent for our apartment is $165 per month until July 1, 1974 when it will be raised to $190 per month. The City Department is presently allowing us only two-thirds of the rent, and on information and belief they will allow us only two-thirds of the $190 rent as of July 1, 1974.

7. Since Carmine does not in fact contribute his share of the rent, I must take money from our food allowance in order to be able to pay the rent. This has caused a great deal of hardship to my younger son and myself. Since Carmine's share of the rent will be a greater amount after July 1, 1974 it will be even more difficult for us to manage.

8. This motion is brought on by Order to Show Cause because the main action is to be heard on June 26, 1974 and there is insufficient time to move by Notice of Motion.

9. There has been no prior application to any court for the relief sought herein.

(Sworn to by Francesca Aloise on June 20, 1974.)

Notice of Intent to Reduce Public Assistance, Exhibit "A" to Complaint of Applicant for Intervention.

The
City
of
New York

[EMBLEM]

HUMAN RESOURCES ADMINISTRATION
DEPARTMENT OF INCOME MAINTENANCE

Center: Bay Ridge Income Maintenance Center

Address: 674 4th Avenue
Brooklyn, New York 11220

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE
(Prepare original and 4 copies)

Mrs. Francena Aloise
1818 81 Street
Bklyn., N.Y. 11223

Case Name: ALOISE Francesca
Case No.: ADC 2351 81-1
Group: 009
Case Composition:

Name	Relationship	Age
.....	.....	....
.....	.....	....
.....	.....	....
.....	.....	....
.....	.....	....

Notice of Intent to Reduce Public Assistance, Exhibit "A" to Complaint of Applicant for Intervention.

. . . . . .

. . . . . .

. . . . . .

. . . . . .

This is to advise you that this Department intends to reduce your public assistance grant on (date) 11/28/73 for the following reason(s):

We will reduce your budget as your son is working.

Old Budget		New Budget	
$80.50	Preadded	$80.50	Preadded
80.00	Shelter	80.00	Shelter
$160.50	Depot	$160.50	Needs
		100.64	Employment
		$ 59.86	

You may have a conference at this center to review this decision at any time before the proposed date of reduction of your grat. If you wish a conference please call us at (telephone no.) 630-2125.

(Illegible)

Worker/Income Maintenance Specialist

11/12/73 — Date

009 — Section or Group

(Illegible)

Supervisor

11/12/73 — Date

009 — Section or Group

Notice of Intent to Reduce Public Assistance, Exhibit "A" to Complaint of Applicant for Intervention.

RIGHT TO FAIR HEARING

If you believe that your assistance should not be reduced you may request a state fair hearing by telephoning 488-6550 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence as to why this action should not be taken. You will also have an opportunity to question any persons who appear at the hearing to present evidence against you. If you request a fair hearing before the date your assistance is proposed to be reduced you will continue to receive your assistance unchanged until the fair hearing decision is issued.

Decision After Fair Hearing, Exhibit "B" to Complaint of Applicant for Intervention.

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

FRANCENA ALOISE

from a determination by the New York City Department of Social Services (hereinafter called the agency)

DECISION AFTER FAIR HEARING

A fair hearing was held at Two World Trade Center, New York, New York on December 12, 1973, before William Meyers, Hearing Officer, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of a grant of aid to dependent children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant and two minor children are recipients of a grant of aid to dependent children. One of appellant's children, Carmine, is eighteen years of age, not a student, and employed. The agency has been budgeting the household on the basis of three persons and determined to reduce the budgetary needs because of the available net applicable employment income of appellant's minor son.

(2) The agency sent a Notice of Intent to Reduce appellant's grant on November 12, 1973 to be effective Novem-

ber 28, 1973. The appellant requested a fair hearing to review the agency's proposed action on November 19, 1973. The agency was notified by the State Department of Social Services that appellant's grant must be continued without change until a fair hearing decision is issued. The agency has continued assistance unchanged to the appellant through the date of this hearing, and the agency has stated that assistance will be continued until a fair hearing decision is issued.

(3) Appellant's son, Carmine, residing in appellant's home, is employed full time and not a student. The agency determined to budget the family as follows:

	Semi-monthly
Basic maintenance	$ 80.50
Shelter	80.00
Total needs	$160.50
Net applicable employment income	100.64
Budget deficit	$ 59.86

The agency has not established that appellant's son is making financial contribution to the household and he has indicated an unwillingness to do so.

Section 101.1 of the Social Services Law provides as follows:

> "The spouse or parent of a recipient of public assistance or care or of a person liable to become in need thereof shall, if of sufficient ability, be responsible for the support of such person, provided that a parent shall be responsible only for the support of a minor

child. Step-parents shall in like manner be responsible for the support of minor step-children."

Section 352.16 (a) of the Regulations provides in fact as follows:

"All income and resources of an applicant for or recipient of aid to dependent children shall be considered in order to determine its availability; such income and resources shall be reasonably evaluated; and, when determined to be available, after policies governing the exemption and disregard of such income and resources have been applied, shall be applied towards meeting the needs of an individual and his dependents."

Section 369.2 (b) of the Regulations provides in fact as follows:

"A child or minor is eligible if under the age of eighteen; a minor between eighteen and 21 years of age is eligible if he is regularly attending high school, a college or university, or a course of vocational or technical training."

Section 352.30 (d) of the Regulations provides as follows:

"A non-legally responsible relative or unrelated person in household, who is not applying for nor receiving public assistance shall not be included in the budget and shall be deemed to be a lodger or boarding lodger. The amount which the lodger or boarding lodger pays shall be verified and treated as income to the family. For the lodger, the amount in excess of $15. per month shall be considered as income; for such boarding lodgers, the amount in excess of $60. per month shall be considered as income. In the event a lodger does not contribute at least $15. per month, the family's shelter

allowance including fuel for heating shall be a pro rata share of the regular shelter allowance."

The evidence establishes that appellant's son being age eighteen and not a student, is no longer eligible for a grant of aid to dependent children. Since he is not legally responsible for the support of his parent or brother and that contributing to the home, his employment income may not be utilized to meet budgetary needs. His needs should be removed from the budget and a prorated ⅔ shelter allowance provided.

DECISION: The agency may reduce recurring grants by removing appellant's son, Carmine's needs from the budget and provide a prorated shelter allowance. The determination of the agency to budget the son's employment income is not and cannot be affirmed. The agency is directed to take appropriate action in accordance with the provisions of Section 358.22 of the Regulations of the State Department.

DATED: Albany, New York
FEB 15 1974

BY CARMEN SHANG
Carmen Shang
ASSISTANT COMMISSIONER

ABE LAVINE
Abe Lavine
COMMISSIONER

Answer of State Defendants in *Hurley* v. *Van Lare*.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROSE HURLEY, individually and on behalf of her minor dependent children, DOREEN HURLEY, JAMIE HURLEY and JOHN HURLEY, and on behalf of all other persons similarly situated,

Plaintiffs,

against

BARRY VAN LARE, individually and in his capacity as Acting Commissioner of the Department of Social Services of the State of New York,

ABE LAVINE, individually and in his capacity as Commissioner of the Department of Social Services of the State of New York,

LOUIS P. KURTIS, individually and in his capacity as Commissioner of the Department of Social Services of the County of Westchester,

Defendants.

72 Civ. 3423

The state defendants answering the Amended Verified Complaint herein by their attorney, Louis J. Lefkowitz, Attorney General of the State of New York, respectfully allege upon information and belief:

1. Deny so much of paragraphs "1" and "2" as alleges that the constitutional claims raised are substantial enough to establish a cause of action under 42 U.S.C. § 1983 and to vest this Court with jurisdiction under 28 U.S.C. § 1343(3) and (4) and that any claim on behalf of welfare recipients to retroactive awards of public assistance benefits is au-

thorized by 28 U.S.C. §§ 2201, 2202, Rule 57 of the Federal Rules of Civil Procedure and/or by 42 U.S.C. § 1983.

2. Deny so much of paragraph "3" as alleges that the constitutional claims alleged are substantial enough to warrant the convening of a three-judge court.

3. Deny so much of paragraphs "5" and "6" as alleges that a class action is proper in the premises and alternatively, if determined to be proper that said class is broader than all residents of the State of New York who are or will be receiving public assistance, and who have had their grants of public assistance reduced, terminated, suspended or denied or who may be threatened with reduction, termination, suspension or denial of public assistance, solely because of the presence of a non-contributing lodger in the home pursuant to 18 N.Y.C.R.R. §§ 352.30(d) and 352.31(a)(3)(iv).

4. Deny so much of paragraphs "7" and "8" as alleges that defendants Van Lare and Lavine are liable for suit in their individual capacities in this action.

5. Deny paragraph "14" except as it pertains to November and December of 1970 and January and February of 1971 and except as it alleges that plaintiff's male friend was not under any legal obligation to provide financial assistance or support to plaintiff or her children.

6. Deny paragraph "20" except as it alleges that the application of §§ 352.30(d) and 352.31(a)(3)(iv) affected a reduction of $120 in the amount of public assistance paid to plaintiff and her children over a four month period.

7. The state defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations

in paragraph "21" except that said defendants deny that 18 N.Y.C.R.R. §§ 352.30(d) and 352.31(a)(3)(iv) prevent plaintiff from associating with her male friend.

8. Deny so much of paragraph "22" as recites 18 N.Y.C.R.R. § 352.30(c) on the grounds that the section is not relevant to this action.

9. Deny each and every allegation in paragraphs "24", "25", "26", "27" and "28".

FACTUAL ALLEGATIONS

10. At all times relevant herein plaintiff Hurley has been and continues to be a recipient of public assistance on the AFDC program on behalf of herself and her three minor children Doreen, Jamie and John.

11. From on or about December 8, 1969 until March 5, 1971, plaintiff Hurley and her children resided in a first floor apartment at 210 Hillside Avenue, Mount Vernon, New York, County of Westchester. Said apartment consisted of at least the following rooms: Living room, kitchen with dining area, three bedrooms, and bath. Plaintiff Hurley's actual rent was $150 per month. With the exception of the period of November and December 1970 and January and February 1971, discussed further below, Mrs. Hurley's AFDC unit received a shelter allowance equal to the actual rent. The applicable local maximum was $182 per month.

12. On March 5, 1971, Mrs. Hurley and her children moved from the Hillside Avenue address to 12 Wallace Avenue in Mount Vernon (then her parents' home) and on April 29, 1971, from the Wallace Avenue address to 90 Brookside Avenue, also in Mount Vernon. On or about

November 1, 1973, Mrs. Hurley and her children moved to R.D. #1 Bloomingburg, New York, County of Sullivan.

13. On or about November 28, 1967 the Westchester County Department of Social Services provided Mrs. Hurley's public assistance unit with a grant of $718.50 pursuant to her request for the purpose of obtaining furniture.

14. On or about September 15, 1970, a caseworker from the Westchester County Department of Social Services made an unannounced "home visit" to Mrs. Hurley at the first floor apartment on Hillside Avenue. During the course of that visit the caseworker observed the following items of furniture in the apartment among others: *Living room*—Color console television set; plush velvet sofa; plush velvet arm chairs; coffee table with ornaments; draperies; wall to wall carpet (green); *Master bedroom*—bedroom set; wall to wall carpet (blue); *Twins bedroom*—bunk beds; wall to wall carpet (red); *Doreen's bedroom*—wall to wall carpet; *Kitchen*—five piece dinette set.

15. Upon inquiry to Mrs. Hurley, the caseworker was advised that the foregoing items had been given to Mrs. Hurley by a male friend (one ADR) and that the furniture which had been purchased with the November 18, 1967 grant was stored in the basement with the exception of the furniture in Doreen's room. (A copy of the caseworker's report of the September 15, 1970 "home visit" is annexed hereto and marked Defendants' Exhibit "A" [DXA]).*

16. During the months of November and December 1970, and January and February 1971, Mrs. Hurley's male

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* Plaintiffs attorney has advised that he contests the allegations made in the foregoing paragraph. Accordingly, defendants plan to offer proof of these facts at trial and/or through depositions taken subsequently.

friend (ADR) resided with her and the minor children. During this period of time, ADR continued to be employed but did not pay any portion of the shelter costs or contribute to the support of plaintiff or her children.

17. Upon being satisfied that the ADR was in fact residing with Mrs. Hurley at her apartment, Westchester County Social Services advised plaintiff that the public assistance unit's grant would be reduced by $35 per month with reference to the four month period aforesaid.

18. Mrs. Hurley sought a state "fair hearing" with respect to the reduction which was had on March 22, 1971. As a result of the decision thereon the Westchester County action was modified to conform with 18 N.Y.C.R.R. §§ 352.30(d) and 352.31(a)(3)(iv) and a reduction of $30 per month (⅕ of $150 shelter allowance) was ordered with reference to the four month period.

19. After February 28, 1971, ADR ceased to reside with Mrs. Hurley and there has been no pro-rata reduction in her shelter allowance since that date.

AS AND FOR A FIRST DEFENSE.

20. The Court lacks subject matter jurisdiction because of the insubstantiality of the constitutional claims alleged.*

AS AND FOR A SECOND DEFENSE.

21. 18 N.Y.C.R.R. §§ 352.30(d) and 352.31(a)(3)(iv) are consistent with federal law and the regulations promulgated pursuant thereto including 42 U.S.C. §§ 602(a)(7), (10) and 606 and 45 C.F.R. § 233.90.*

* Previously argued and repeated herein only for completeness.

* Previously argued and repeated herein only for completeness.

AS AND FOR A THIRD DEFENSE.

22. 18 N.Y.C.R.R. §§ 352.30(d) and 352.31(a)(3)(iv) do not violate any of plaintiff's rights under the First Amendment of the United States Constitution and/or any constitutional right to privacy.

AS AND FOR A FOURTH DEFENSE.

23. 18 N.Y.C.R.R. §§ 352.30(d) and 352.31(a)(3)(iv) do not violate any of plaintiff's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

AS AND FOR A FIFTH DEFENSE.

24. 18 N.Y.C.R.R. §§ 352.30(d) and 352.31(a)(3)(iv) do not violate any of plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, the state defendants pray for judgment dismissing the complaint for want of jurisdiction or alternatively, declaring 18 N.Y.C.R.R. §§ 352.30(d) and 352.31(a)(3)(iv) constitutional under the First and Fourteenth Amendments and for such other and further relief as the Court deems just and proper on the premises.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Van Lare and Lavine

JUDITH A. GORDON
Assistant Attorney General

(Verified by Judith A. Gordon, June 24, 1974.)

Excerpts From Case Record of Rose Hurley, Exhibit "A" to State Defendants' Answer.

HURLEY, Rose
210 Hillside Avenue
Mount Vernon, New York ADC

5/28/70 Mrs. Hurley called on marginal date to inform worker that her daughter, Doreen, had been confined to Medical Center Hospital in New York City and that she was diagnosed as having cystitis fibrosis. Doreen will be released 5/29/70, and she will need various apparatus at home to help relieve Doreen's condition. Doreen also suffers from diabetes. Mrs. Hurley was informed to apply for state aid by Dr. Denning of the Presbyterian Medical Center, New York City. Mrs. Hurley asked worker to contact Dr. Denning's secretary a Mrs. Cheronxeau, 212-579-2285. Mrs. Hurley maintains that Dr. Denning's secretary would inform worker more on Doreen's condition.

Telephone Call 5/28/70 Mrs. Keane
Worker contacted Mrs. Keane, supervisor of Social Work, White Plains to receive instructions as to how to inform Mrs. Hurley to apply for state aid. Mrs. Keane maintains that Mrs. Hurley is to obtain form #MR 14, issued by the Westchester Health Department and forward this to Dr. Denning.

Worker informed Mrs. Hurley on this date.

5/28/70 *Telephone Call:*
Worker returned phone call to Mrs. Ford, a public health nurse, at the Mt. Vernon Health Service stating that our agency was aware of the Hurley situation.

Excerpts From Case Record of Rose Hurley, Exhibit "A" to State Defendants' Answer.

Telephone call 5/28/70:
Worker also contacted Mrs. Clark, supervisor of nurse services in White Plains, ext. 592. She, Mrs. Clark also maintains that Mrs. Hurley is to send forms MR-14 to Dr. Denning's office at Presbyterian Hospital. This form is to be completed and returned to the County Office Building in White Plains.

6/4/70 It was agreed that we would pay Mrs. Carmella Williams $90.00 per week for 3 week period totaling $270.00. At this time Purchase of Service was set up for in-home day care to Mrs. Carmella Williams. It was also agreed on 6/10/70, that Mrs. Anna DeAnna, Mrs. Hurley's aunt, would receive a one issue purchase of service for $120.00 the length of time 2/27/70 to 3/20/70 $40.00 per week as Mrs. DeAnna manages Mrs. Hurley's grant when Mrs. Hurley was confined. Mrs. DeAnna, also agreed to this amount.

9/15/70 *Home Visit and Reinvestigation:*
Since worker had not visited the Hurley's household, since Mrs. H. had moved downstairs, worker made an unannounced home visit to the Hurley's household. Mrs. Rose Hurley lives in a 6 room apartment on the first floor of a two family house. The rent remains $150.00 and the utilities are extra. The security has been transferred from Mrs. Hurley's upstairs apartment to her downstairs apartment. The landlord is Mr. Peter Adamo, PE-8-3162 of 18 Maple Avenue, Pelham, New York. Mrs. Hurley claims that she was able to obtain this apartment after the Adamo's separated and are now divorced. There is no verification of rent and worker asked that receipt

for three months be presented to our office by 9/28/70, or we will hold her 10/1 grant. Mrs. Hurley lives with her three children and Mrs. Hurley's husband's whereabouts are unknown. Mrs. Hurley is seeking a divorce but has not filed for one as of yet. Mrs. Hurley claims she has not "gotten around to obtaining one".

Health:

The twins, Jamie and John, born 8/9/67, are fine; their health is good; their physician is Dr. Kessler of Mount Vernon. Daughter, Doreen 4/18/62, is a diabetic for which Mrs. Hurley gives her insulin, Globin N-40, every morning. Mrs. Hurley maintains that Doreen will be taught to administer these injections by the Mt. Vernon Nursing Service. Doreen was hospitalized on 5/12/70, released either 5/29 or 6/4/70 from the Presbyterian Hospital, New York City for cystitis fibrosis (see correspondence). Mrs. Hurley stated that this occurrence placed a great strain on her physical as well as her mental health. She stated that she would visit Doreen every day, getting the twins prepared to stay with their grandparents each day, traveling back and forth to New York City and returning for evening visits to see Doreen. After Doreen was discharged from the hospital, she placed additional strain on her mother as she was very demanding by being bedridden. Mrs. Hurley claims that Doreen was promoted to the third grade considering what she had experienced medically in the last year. Doreen had a tutor from the Board of Education. Doreen attends St. Catherine's Parochial School in Pelham, New York. Mrs. Hurley expressed satisfaction over Doreen's im-

provement but she maintains that Doreen must be given special attention due to her condition.

At this time, worker questioned Mrs. Hurley as to her new furniture. Mrs. Hurley maintains that her boyfriend, a Mr. [ADR], helps her out and that he completely furnished her apartment. The living room comprise of colored console television, spanish mediterranean plush velvet sofa of red and green. The two high back plush velvet arm chairs are of green and red and there are gold and black draperies in this living room. There is also green wall to wall carpeting and a very heavy ornamentated spanish mediterranean coffee table with two crystal ornaments. In the master bedroom, Mr. [ADR] has purchased a huge mediterranean bedroom set and blue wall to wall carpeting. The twins room is in a red and white with red and white bunk beds and red wall to wall carpeting. Doreen's furniture remains the same but Mr. [ADR] has also placed wall to wall carpeting in her room. Mrs. Hurley claims that Mr. [ADR] has several businesses and that he is in his early 30's and that he lives at 240 East Prospect Avenue, Mt. Vernon. His apartment, she maintains makes hers look like nothing, in other words there is no comparison between the two. In the kitchen Mr. [ADR] has purchased a beautiful 5 piece dinette set which has high-back chairs of black vinyl and a hexagon shaped dinette table. When worker questioned Mrs. Hurley about previous furniture, she claim that she had stored most of these in the basement because some day she plans to marry Mr. [ADR] and have a home of her own in which these items may be placed also.

Partial Stipulation of Facts in *Taylor* v. *Lavine*.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

73 Civ. 699

ANNIE TAYLOR, individually and on behalf of her minor, dependent child, MARGARET TAYLOR; CHARLOTTE OTEY, individually and on behalf of her minor, dependent child, KEVIN OTEY, and on behalf of all other persons similarly siutated,

Plaintiffs,

against

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services, and JAMES M. SHUART, individually and in his capacity as Commissioner of the Nassau County Department of Social Services,

Defendants.

IT IS HEREBY STIPULATED AND AGREED by and between attorneys for the respective parties that following facts are agreed upon in the above-entitled action:

PLAINTIFF TAYLOR

1. At all times relevant herein plaintiff Annie Taylor has been and continues to be a recipient of public assistance on the AFDC program on behalf of herself and her minor child Margaret.

2. At all times relevant herein, plaintiff Taylor and her child have resided in an apartment 148 North Main Street,

Freeport, New York, County of Nassau. Said apartment consists of at least the following rooms: Living room, kitchen, one bedroom, and bath. Until June 1, 1974, the actual rent for the apartment was $180.00 per month. The lease for the apartment was held by plaintiff Taylor.

3. At all times relevant herein, plaintiff Taylor's sister, Virginia Taylor, has resided with the plaintiff and her minor child. Virginia Taylor is 24 and disabled. Virginia Taylor has no legal obligation to contribute to the support of plaintiff Taylor or plaintiff's minor child.

4. At all times relevant herein prior to January, 1973, plaintiff Taylor received a shelter allowance of ⅔ of the Nassau County maximum for an apartment of 3-4 rooms (with heat) accommodating 3 people, or $110 monthly (⅔ x $165). Virginia Taylor received public assistance on the home relief program and by reason thereof received ⅓ of the local maximum, or $55 monthly, as her shelter allowance. The Taylors made up the difference between the local maximum and their actual rent ($15 monthly) from their "basic" or "pre-added" grants.

5. Effective January 1, 1973, Virginia Taylor's home relief was discontinued by the County on the grounds of non-eligibility. She did not seek a state "fair hearing" and does not contest the validity of the discontinuance in this proceeding.

6. During the months of January and February, 1973, Virginia Tayor was without public assistance, and had no other income. She did not pay any portion of the shelter costs and did not contribute to the support of plaintiff Taylor or plaintiff's minor child. Plaintiff Taylor continued to receive a monthly shelter allowance of ⅔ of $165.

7. In January 1973 plaintiff Taylor requested that the County Department of Social Services adjust her "basic" grant to reflect an assistance unit of two persons rather than ⅔ of a three person unit and to adjust her shelter allowance to the maximum for a 2-4 room apartment accommodating 1-2 persons under the local schedule, or $145 monthly. Plaintiffs request as to the "basic" grant was allowed and her request as to the shelter allowance denied.

8. Plaintiff sought a state fair hearing on the denial of her request as to the shelter allowance. The hearing was conducted on March 14, 1973. By decision dated April 20, 1973, the County's determination was sustained on the ground that Virginia Taylor was a "non-contributing" lodger under § 350.30(d) for the two month period in issue. The decision states in part as follows:

"(1) Appellant and her daughter are recipients of aid to dependent children.

(2) Living with them is appellant's sister who is not in reciept of public assistance and who does not contribute to the rent.

(3) The maximum rent as per filed schedules for an apartment, such as appellant's, for two persons is $145 and for three persons it is $165.

(4) The agency has budgeted appellant's shelter allowance at ⅔ of $165.00, or $110.00.

(5) Appellant claims that it should be budgeted at $145, the maximum for 2 persons, since the third person does not contribute anything to the rent.

Pursuant to Section 352.30(d) of the regulations of the State Department of Social Services a non-legally relation in the household who is not receiving public assistance shall be deemed a lodger. In the event the

lodger does not contribute at least $15.00 per month, the family's shelter allowance shall be [a] pro rata share of the regular shelter allowance. Therefore, the agency's determination to allow the appellant a shelter allowance in the amount of $110 was correct and in accordance with the above cited regulation.

Decision: The determination of the agency is affirmed."

9. As a result of the reduced shelter allowance payable to the Taylor sisters and plaintiff's minor child during January and February of 1973, arrears equal to a portion of one month's rent accrued. On the basis of these arrears a warrant of eviction issued against plaintiff Taylor which she nullified by payment out of the proceeds of her April 1973 "basic" grant.

10. Effective ~~March 14,~~ 1973, Virginia Taylor was restored to public assistance in the Aid to the Disabled category. On or about January 1, 1974 her case was transferred to the SSI program which is directly federally funded. On both programs, a portion of her grant is attributable to her shelter costs and is not challenged as inadequate herein.

PLAINTIFF OTEY

11. At all times relevant herein plaintiff Charlotte Otey has been and contniues to be a recipient of public assistance in the AFDC program on behalf of herself and her minor child, Kevin.

12. At all times relevant herein, plaintiff Otey has resided with her minor child at 30B Waverly Avenue, Freeport, New York, County of Nassau. The apartment con-

sists of at least the following rooms: Living room, kitchen, two bedrooms and bath. The actual rent is for the apartment is $145. Subsequent to February 1974, plaintiff received a shelter allowance of $145 monthly, the local maximum for a 2-4 room apartment accommodating 2 people, or her actual rent.

13. On or about October 1, 1972, Michael Otey, plaintiff's adult son, age 24, came to reside with plaintiff at the Waverly Place apartment. During his residence there, Michael Otey was unemployed except for occasional temporary jobs. He was not obligated to support plaintiff or her minor child. He did not pay any portion of the rent and did not make any contribution to plaintiff. Michael Otey has resided with plaintiff on several occasions prior to October of 1972 and after he had reached the age of 18 years.

14. On or about October 26, 1972, plaintiff Otey was advised that her shelter allowance would be reduced for the following reason: "You must share shelter with your son, Michael Otey. Your share of shelter is $96.65 [⅔ x $145]."

15. On November 8, 1972 plaintiff Otey requested a state "fair hearing." However she failed to appear because Michael had advised her that he would either find a job and contribute to the household or leave the state to stay with relatives in West Virginia. Neither of these events occurred.

16. The reduction in plaintiff Otey shelter allowance became effective in February 1973. However, in that month in order to forestall eviction because of arrears of $48.34, the local agency paid plaintiff's landlord an additional $45 which it then recouped out of plaintiffs March 1973 basic grant.

17. After a state "fair hearing" the April 1973 recoupment was found improper by the state because the plaintiff was not directly threatened with eviction and the amount of the recoupment was restored.

18. On or about February 1, 1974, Michael Otey left plaintiff Otey's apartment to reside independently. Since that date he has received public assistance on the home relief program and the reduction in plaintiff Otey's shelter allowance has been discontinued.

IT IS FURTHER STIPULATED AND AGREED that either side shall have the right to supplement the foregoing statement of facts.

Dated: New York, New York
June 25, 1974

s/ Leonard Clark
LEONARD CLARK, Esq.
Attorney for Plaintiffs
Taylor and Otey

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine
By .....

s/ Judith A. Gordon
JUDITH A. GORDON
Assistant Attorney General

Supplemental Affidavit of Rose Hurley in Support of Motion for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

72 Civ. 3423 A.B.

ROSE HURLEY, et al.,

Plaintiffs,

—against—

BARRY VAN LARE, et al.,

Defendants.

STATE OF NEW YORK
COUNTY OF SULLIVAN } ss.:

ROSE HURLEY, being duly sworn, deposes and says that:

1. I am the named plaintiff in the above-entitled action. I make this affidavit to supplement and bring up-to-date my affidavit of January 16, 1973, in support of plaintiffs' motions for summary judgment and a class action determination.

2. When I resided at 90 Brookside Avenue, Mount Vernon, New York, I had 4½ rooms, including two bedrooms. One bedroom was for myself, one for my two daughters. I converted a closet into a bedroom for my son. The monthly rental for this apartment was always $175, except that some time in 1973, the rent was raised to approximately $200 per month. The Westchester County Department of Social Services paid this full $200 per month. The male friend referred to in my prior affidavit did not reside with me at any time after February, 1971, because I feared that if he did my shelter allowance would be re-

duced as it was in the past because of his presence in the home. I last saw him approximately six months ago.

3. Because of the health problems of my oldest daughter, Doreen,—she has cystic fibrosis—I moved to Bloomingburg, New York, in late August, 1973. I rent a house at a
(R. H.) rental of $210 per month, for which the Department of
210
Social Services provides me with ~~$117~~ per month for rent. The total monthly A.F.D.C. welfare grant for my three children and myself is $441.

4. My present home consists of three bedrooms, a living room, a dining room and a kitchen. I have one bedroom, my oldest daughter, Doreen, has one bedroom, and my other two children, Jamie, age 7, and John, age 7, who are twins, share the third bedroom.

5. About five months ago I met a man who resides in the area of my present residence. He is paying for the legal fees in a divorce proceeding I have brought against my husband, whose whereabouts are unknown. He does not provide any support to my children and I, and has no legal obligation to provide such support. This man would have resided with my children and I for the past four months and would continue to reside with us if it were not for the fact that if he resided with us, the Department of Social Services would reduce our shelter allowance. I fear allowing anyone to reside with us because it will result in the reduction of our shelter allowance.

6. This man and I would like to get married some time after November, 1974, assuming that my divorce proceeding will be completed by then.

WHEREFORE, I respectfully pray this Court grant my motions for summary judgment and a class action determination.

(Sworn to by Rose Hurley, June 21, 1974.)

Second Supplemental Affidavit of Rose Hurley in Support of Motion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

ROSE HURLEY, being duly sworn, deposes and says that:

1. I am the named plaintiff in the above entitled action. I make this affidavit to further supplement my prior affidavits in support of plaintiffs' motions for summary judgment and a class action determination. I have personal knowledge of all of the facts set forth herein.

2. When my grant was reduced by The Department of Social Services in November and December, 1970 and January and February, 1971, I resided at 210 Hillside Avenue, Mount Vernon, New York. I had five (5) rooms: one bedroom, in which I resided with my two younger children; a smaller bedroom, in which my older daughter resided; a kitchen, dining area and living area. Because my two younger children (who are twins) are male and female, I found it necessary to convert the dining area into a bedroom for one of the younger children. My rental at all times that I resided at 210 Hillside Avenue was $150.

3. In July, 1971, I moved to 90 Brookside Avenue, Mount Vernon, New York. There I had four and one half rooms, including two bedrooms. One bedroom was for myself, one for my two daughters. I converted a closet

into a bedroom for my son. The monthly rental for this apartment was always $175, except that some time in 1973, the rent was raised to approximately $200 per month. The Westchester County Department of Social Services paid this full $200 per month.

4. I moved to Bloomingburg, New York in August, 1973. My rental here is $210 per month, which is paid by the Department of Social Services. My present home consists of three bedrooms, a living room, a dining room and a kitchen. I have one bedroom, my oldest daughter, Doreen, has one bedroom and my other two children share the third bedroom.

5. I have never had more space than is necessary for my children and I.

WHEREFORE, I respectfully pray that this Court grant my motions for summary judgment and a class action determination.

(Sworn to by Rose Hurley, July 5, 1974.)

Supplemental Affidavit of Phyllis D'Alessio in Support of Motion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

PHYLLIS D'ALESSIO, being duly sworn, deposes and says that:

1. I am one of the proposed intervenors in the above-captioned action. I make this affidavit to supplement my affidavit of February 6, 1973, which was submitted in support of my motions to intervene as a party plaintiff in the above action, for a preliminary injunction and class action determination. I have personal knowledge of all of the facts set forth herein.

2. My apartment at 40 South West Street, Mount Vernon, New York, consists of five rooms, including two bedrooms. Mr. Mottola and I share one bedroom, my two daughters share the other bedroom and sleep on double decker beds. We have a kitchen, a living room and a tiny room about as big as a closet in which I keep my refrigrator. The space is the minimum for myself and two daughters. Mr. Mottola does not take up any space beyond that which is the minimum needed by my daughters and myself.

3. Mr. Mottola is not a recipient of public assistance, does not and is not able to work, and has not and does not provide any support to my children and I. He recently

spent three weeks in the Veterans' Administration Hospital because of his high blood pressure.

4. The size of the rooms in my apartment at 40 South West Street are as follows: my bedroom is 12′ x 15′, the children's bedroom is 8′ x 10′, the living room is 12′ x 14′, the room with the refrigerator is 5′ x 6′, and the kitchen is 9′ x 13½′.

WHEREFORE, I respectfully pray that this Court grant my motions to intervene, for a preliminary injunction and class action determination.

(Sworn to by Phyllis D'Alessio, June 25, 1974.)

Supplemental Affidavit of Loretta Clark in Support of Motion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF ERIE
CITY OF BUFFALO } ss.:

LORETTA CLARK, being duly sworn, deposes and says:

1. That I am one of the proposed intervenors in the above captioned action. I make this affidavit in support of my motions to intervene for a preliminary injunction on behalf of myself and my minor children.

2. That this affidavit is to supplement and bring up to date my affidavit of March 21, 1973, submitted in the Hurley Action in support of motions to intervene on behalf of myself and my minor children.

3. My five minor children and I are citizens of the United States and residents of Buffalo, New York, and reside together at 249 Moselle, Buffalo, New York. I was divorced in September, 1967 and have not seen, heard or been in contact with my husband for several years and do not know where he presently can be located.

4. I am forty (40) years of age and reside with my five minor children, Loretta Jean Clark, age 13, Betty Anne Clark, age 12, Lillian Marie Clark, age 10 and Clara and Dawn Clark, twins, age 7, and my male friend, Sidney Ray, who is forty-five (45) years of age.

Supplemental Affidavit of Loretta Clark.

5. My five minor children and I are receiving public assistance pursuant to the federal-state AFDC program and have been receiving such assistance for approximately the last thirteen years.

6. I currently receive outpatient treatment for nervous tension once weekly at the Meyer Memorial Hospital in Buffalo.

7. My oldest daughter, Loretta Jean, was born with a congenital heart defect known to me as "blue baby" and she continues to receive outpatient care several times per month at Children's Hospital in Buffalo.

8. My male friend and I have lived together for about five years. During that period he has helped with housework, and preparing meals, and he has looked after the children when I have been ill or when I have to take one of my children on an errand. Mr. Ray and I intend to live together in the future, but we do not, at this time, intend to marry.

9. Mr. Ray is supported by his Social Security Disability payments, which are $128.00 per month. Mr. Ray generally pays for his own share of the household food budget. Mr. Ray also makes occasional gifts of clothing to my children; however, he does not appear willing or able to undertake actual support of me or any of my children.

10. Prior to November 1, 1972, my semi-monthly public assistance grant was $204.00; but thereafter the grant was reduced further because I received a notice dated December 6, 1972 from the Erie County Department of Social Services that my grant would be reduced to $174.60. See Exhibit

"A". That reduction was delayed pending an administrative appeal.

11. A fair hearing was held on January 8, 1973 and at that time the agency revised the amount of reduction to $187.90 because Mr. Ray was unemployed and had no income whatever. In a fair hearing decision dated February 14, 1973 the Commissioner of the Department of Social Services affirmed the determination that my grant should be reduced to $187.90. See Exhibit "C".

12. Presently I receive a semi-monthly public assistance grant of $208.00 from the Erie County Department of Social Services for myself and my children. This grant includes the scheduled flat grant for six people and 6/7 of my fuel allotment and 6/7 of my rent allotment. The rent and fuel allotments for myself and my children have been reduced because of Mr. Ray's presence in my home.

13. The health and welfare of my children and myself has been endangered because of the reduction of my public assistance grant. For example, the Erie County Department of Social Services has recently authorized me to retain ownership of a 1968 Ford station wagon on grounds that a car is essential to travel to and from medical providers, but no extra money is available to operate the car. Therefore my family's subsistance budget is already severely strained, and a reduction of assistance will simply mean less food for my children.

WHEREFORE, I respectfully pray this Court grant my motion to intervene and for a preliminary injunction.

(Sworn to by Loretta Clark, June 20, 1974.)

Affidavit of Susan E. Smith in Support of Motion.

[SAME TITLE]

1. I am a Research Analyst employed by the Bureau of Social Science Research, Inc., a private corporation located in Washington, D. C. I hold a Master's Degree in Political Science.

2. The Bureau of Social Science Research was founded approximately 23 years ago by the present director, Robert T. Bower.

3. The function of the BSSR is to conduct research in the social science area and to contribute to the advancement of social science theory and methodology. Approximately 80 percent of the work is survey research. The Bureau is supported by government contracts and through private foundation grants.

4. In my capacity as a research analyst at the Bureau of Social Science Research, I recently obtained U. S. Census data from the Bureau of Census report titled *Detailed Characteristics* (PC1-D Series) on the number of households in the state of New York which have persons besides the spouse or children of the head of the household living within the household. Data tables in this publication show the number of households which have various relatives (grandchild, parent, son or daughter-in-law, brother or sister, or other relative of the head of the household or a non relative "lodger" living within the household. These data are provided for six different types of household heads: white male, white female, black male, black female, Puerto Rican male, Puerto Rican female. According to the Census definitions, all persons living in the

household who were not in one of the relative categories are classified as "lodger (or partner)." The 1970 Census of Population and Housing, questionnaire items and the Bureau of Census explanation of the terms are appended to this affidavit.

5. In addition, from the same U. S. Census publication, I obtained the median income and the percentage living below the poverty level within each of the six heads of household groupings listed above.

6. The first page of the data tables for each of the above cited items of information are appended to this affidavit.

7. The results of the computations are shown in the attached Figure 1.

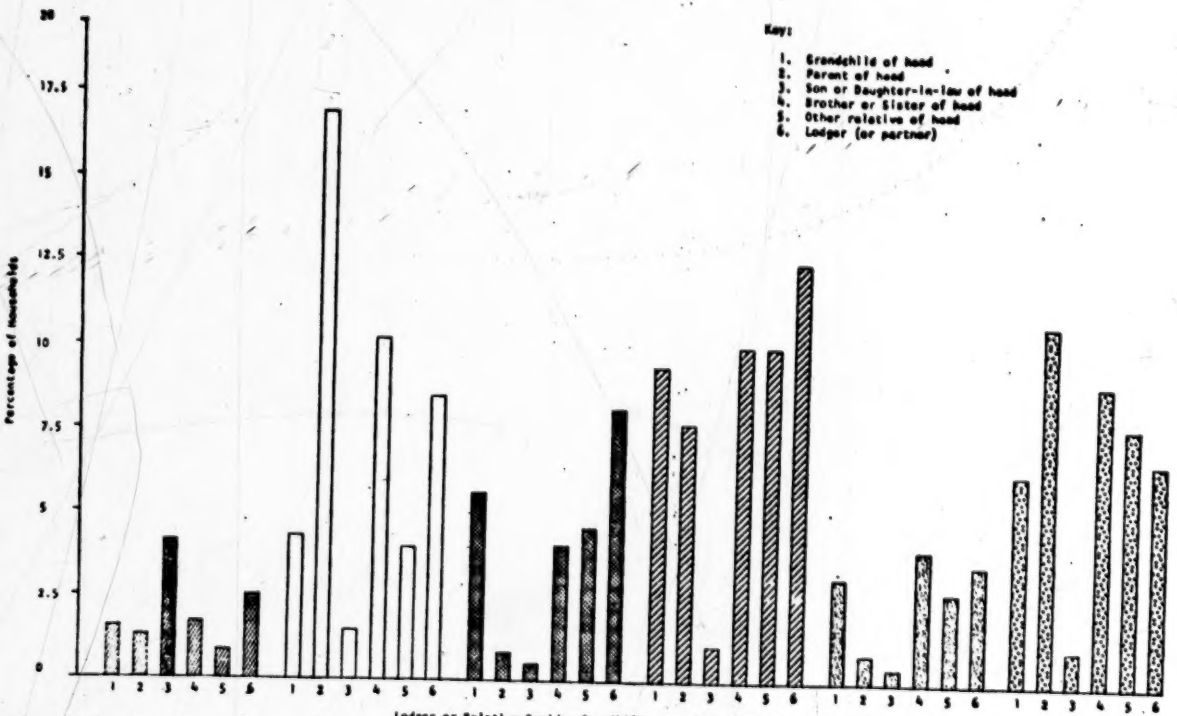
8. This table clearly shows that, in general, those groups of heads of household with the lowest median income (White, Black and Puerto Rican females) and, similarly, the largest percentage of persons living on income below the poverty level, are considerably more likely to have one or more persons besides their immediate families living within their households than are those in the higher income groups.

(Sworn to by Susan E. Smith, June 23, 1974.)

Table, Exhibit "A" to Smith Affidavit.

(See opposite ☞)

PERCENTAGE OF HOUSEHOLDS WITH LODGER OR RELATIVE BESIDES OWN CHILDREN OR SPOUSE LIVING IN, BY RACE, SEX AND INCOME OF HEAD OF HOUSEHOLD, NEW YORK, 1970



Head of Household:	White Male	White Female	Black Male	Black Female	Puerto Rican Male	Puerto Rican Female
1970 Median Income:	$11,239	$4,507	$8,072	$3,948	$6,527	$3,109
1970 Per cent below Poverty Line:	7.5% 7.5%	31.1% 31.1%	8.3%	38.8%	19.4%	54.1%

Source: U.S. Department of Commerce, Bureau of Census, Detailed Characteristics (PC-034, Tables 153 and 387).

Detailed Characteristics, New York 1970 Census of Population, Exhibit "B" to Smith Affidavit.

(See opposite ☞)

Table 153. Persons in Households by Relationship to Head, 1970 and 1960, and by Race and Sex, 1970—Continued

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

The State Urban and Rural Standard Metropolitan Statistical Areas of 250,000 or More	Persons by relationship to head of household												Secondary individuals in households	
	Head of household					Family members other than head								
				Head of family										
	Total in households	Total (number of households)	Primary individual	Total	Married, spouse present	Wife of head	Child of head	Grandchild of head	Parent of head or wife	Son- or daughter-in-law of head	Brother or sister of head or wife	Other relative of head	Lodger (or partner)	Resident employee
THE STATE—Continued														
White														
Male, 1970	7 426 998	4 050 752	412 718	3 638 034	3 493 334	...	3 054 651	53 656	47 787	17 449	69 005	33 646	98 010	2 892
Percent	100.0	54.5	5.6	49.0	47.0	...	41.1	0.7	0.6	0.2	0.9	0.4	1.3	-
Under 5 years	630 828	-	-	-	-	...	602 616	20 775	-	-	607	3 050	3 658	122
5 to 9 years	719 169	-	-	-	-	...	699 702	11 725	-	-	916	3 038	3 645	143
10 to 14 years	742 371	1 058	103	955	854	...	722 872	8 918	7	27	1 776	3 972	3 592	199
15 to 19 years	636 386	14 379	3 734	10 645	9 810	...	595 534	6 860	6	863	5 141	5 013	8 176	414
20 to 24 years	493 415	200 434	34 372	166 062	160 194	...	251 923	3 249	14	4 927	6 911	4 202	21 491	264
25 to 29 years	488 112	384 139	42 737	341 402	332 711	...	79 492	1 081	34	3 721	5 008	2 451	11 950	236
30 to 34 years	417 572	372 556	31 136	341 420	332 058	...	31 773	408	96	1 860	3 195	1 290	6 261	133
35 to 39 years	420 205	386 993	27 210	359 783	348 394	...	22 184	179	178	1 422	3 241	822	4 987	199
40 to 44 years	468 632	437 877	28 983	408 894	394 091	...	18 075	103	229	1 352	4 799	986	5 006	205
45 to 49 years	470 795	446 320	28 426	417 894	401 508	...	12 231	72	494	1 131	5 397	857	4 129	184
50 to 54 years	441 913	420 412	28 109	392 303	375 774	...	8 567	96	959	885	6 122	741	3 984	147
55 to 59 years	414 999	396 006	31 454	364 552	349 514	...	4 494	96	2 133	602	6 751	747	4 035	135
60 to 64 years	360 489	342 563	35 690	306 873	294 037	...	2 007	81	3 764	393	6 340	936	4 247	158
65 to 69 years	272 367	255 675	35 380	220 295	210 030	...	971	-	5 595	136	4 730	1 028	4 088	144
70 to 74 years	204 766	187 314	33 608	153 706	145 472	...	542	9	8 219	100	3 960	1 156	3 434	32
75 to 79 years	135 583	119 786	27 311	92 475	85 932	...	396	-	9 460	19	2 339	999	2 514	70
80 to 84 years	70 619	57 821	15 796	42 025	37 348	...	312	-	8 961	19	1 159	742	1 581	24
85 years and over	38 777	27 419	8 669	18 750	15 607	...	1 010	4	7 638	12	613	816	1 232	33
14 years and over	5 484 065	4 050 752	412 718	3 638 034	3 493 334	...	1 173 617	13 921	47 785	17 469	66 329	23 837	87 962	2 393
Under 18 years	2 517 960	3 878	562	3 316	2 913	...	2 434 745	45 978	13	204	5 653	13 118	13 659	712
Female, 1970	8 867 431	1 163 913	732 812	431 101	...	3 487 944	2 871 374	50 329	197 361	18 435	119 260	46 357	100 509	14 939
Percent	100.0	14.4	9.1	5.3	...	43.2	35.6	0.6	2.4	0.2	1.5	0.6	1.2	0.2
Under 5 years	603 112	-	-	-	...	-	576 060	19 716	-	-	626	3 146	3 363	201
5 to 9 years	688 100	-	-	-	...	-	667 940	11 479	-	-	1 245	3 952	3 266	218
10 to 14 years	716 317	294	157	137	...	793	695 390	8 566	6	20	2 440	5 082	3 515	211
15 to 19 years	633 696	7 301	4 536	2 765	...	32 085	563 386	6 347	-	2 684	6 103	5 982	9 245	563
20 to 24 years	596 791	55 949	36 034	19 915	...	283 564	209 642	2 742	28	6 288	7 167	4 821	25 278	1 312
25 to 29 years	524 304	65 615	33 140	32 475	...	381 585	53 628	651	88	2 596	4 757	2 108	12 077	1 199
30 to 34 years	443 034	54 103	19 652	34 451	...	351 137	25 162	201	307	1 105	3 681	1 259	5 253	826
35 to 39 years	442 204	53 988	16 717	37 271	...	356 950	19 743	226	438	739	4 389	1 000	3 942	789
40 to 44 years	501 943	66 526	22 054	44 472	...	402 992	18 520	75	1 213	607	5 964	1 097	3 807	1 142
45 to 49 years	521 846	78 077	30 634	47 443	...	410 478	15 750	82	2 769	469	8 030	1 262	3 908	1 021
50 to 54 years	498 786	92 705	45 431	47 274	...	371 310	11 236	51	6 418	377	10 456	1 108	3 813	1 312
55 to 59 years	465 572	111 064	68 176	42 888	...	316 143	7 336	69	11 618	263	12 084	1 425	4 129	1 441
60 to 64 years	417 407	130 665	95 442	35 223	...	241 577	3 552	111	19 769	109	13 910	1 626	4 481	1 607
65 to 69 years	352 217	136 770	109 065	27 705	...	164 595	1 526	5	28 142	43	13 617	2 062	4 147	1 310
70 to 74 years	290 576	133 009	108 794	24 215	...	102 628	817	5	35 956	50	10 760	2 478	3 987	886
75 to 79 years	196 624	97 030	78 996	18 034	...	49 170	389	-	36 656	31	7 422	2 680	2 722	524
80 to 84 years	109 320	54 177	43 556	10 621	...	15 762	279	3	30 027	39	4 270	2 548	1 979	236
85 years and over	65 572	26 640	20 478	6 212	...	7 175	1 018	-	23 926	15	2 339	2 721	1 597	141

Table 153. Persons in Households by Relationship to Head, 1970 and 1960, and by Race and Sex, 1970—Continued

(Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

The State Urban and Rural Standard Metropolitan Statistical Areas of 250,000 or More	Total in households	Persons by relationship to head of household: Head of household: Total (number of households)	Head of household: Primary individual	Head of household: Head of family: Total	Head of household: Head of family: Married, spouse present	Family members other than head: Wife of head	Family members other than head: Child of head	Family members other than head: Grandchild of head	Family members other than head: Parent of head or wife	Family members other than head: Son- or daughter-in-law of head	Family members other than head: Brother or sister of head or wife	Family members other than head: Other relative of head	Secondary individuals in households: Lodger (or partner)	Secondary individuals in households: Resident employee
THE STATE—Continued														
White														
Male, 1970	7 456 998	4 050 752	412 718	3 638 034	3 493 334	...	3 054 651	53 636	47 787	17 469	69 005	32 646	98 010	2 093
Percent	100.0	54.5	5.6	49.0	47.0	...	41.1	0.7	0.6	0.2	0.9	0.4	1.3	-
Under 5 years	630 878	-	-	-	-	...	602 616	20 775	-	-	607	3 050	3 658	122
5 to 9 years	719 169	-	-	-	-	...	699 702	11 725	-	-	916	3 038	3 645	143
10 to 14 years	742 371	1 058	103	955	854	...	722 872	8 918	7	27	1 776	3 972	3 592	199
15 to 19 years	636 386	14 379	3 734	10 645	9 810	...	595 534	6 860	6	863	5 141	5 013	8 176	414
20 to 24 years	493 415	200 434	34 372	166 062	160 194	...	251 923	3 249	14	4 927	6 911	4 202	21 491	264
25 to 29 years	488 112	384 139	42 737	341 402	332 711	...	79 492	1 081	34	3 721	5 008	2 451	11 950	236
30 to 34 years	417 572	372 556	31 136	341 420	332 058	...	31 773	408	96	1 860	3 195	1 290	6 261	133
35 to 39 years	420 205	386 993	27 210	359 783	348 394	...	22 184	179	178	1 422	3 241	822	4 987	199
40 to 44 years	468 632	437 877	28 983	408 894	394 091	...	18 075	103	229	1 352	4 799	986	5 006	205
45 to 49 years	470 795	446 320	28 426	417 894	401 508	...	12 231	72	494	1 131	5 397	857	4 129	164
50 to 54 years	441 913	420 412	28 109	392 303	375 774	...	8 567	96	959	885	6 122	741	3 984	147
55 to 59 years	414 999	396 006	31 454	364 552	349 514	...	4 494	96	2 133	602	6 751	747	4 035	135
60 to 64 years	360 489	342 563	35 690	306 873	294 037	...	2 007	81	3 764	393	6 340	936	4 247	158
65 to 69 years	272 367	255 675	35 380	220 295	210 030	...	971	-	5 595	136	4 730	1 028	4 088	144
70 to 74 years	204 766	187 314	33 608	153 706	145 472	...	542	9	8 219	100	3 960	1 156	3 434	32
75 to 79 years	135 583	119 786	27 311	92 475	85 932	...	396	-	9 460	19	2 339	999	2 514	70
80 to 84 years	70 619	57 821	15 796	42 025	37 348	...	312	-	8 961	19	1 159	742	1 581	24
85 years and over	38 777	27 419	8 669	18 750	15 807	...	1 010	4	7 638	12	613	816	1 232	33
14 years and over	5 484 065	4 050 752	412 718	3 638 034	3 493 334	...	1 173 617	13 921	47 785	17 469	66 329	23 837	87 962	2 393
Under 18 years	2 517 960	3 878	562	3 316	2 913	...	2 434 745	45 978	13	204	5 653	13 118	13 659	712
Female, 1970	8 067 431	1 163 913	732 812	431 101	...	3 487 944	2 871 374	50 329	197 361	15 435	119 260	46 357	100 509	14 939
Percent	100.0	14.4	9.1	5.3	...	43.2	35.6	0.6	2.4	0.2	1.5	0.6	1.2	0.2
Under 5 years	603 112	-	-	-	...	-	576 060	19 716	-	-	626	3 146	3 363	201
5 to 9 years	688 100	-	-	-	...	-	667 940	11 479	-	-	1 245	3 952	3 266	218
10 to 14 years	716 317	294	157	137	...	793	695 390	8 566	6	20	2 440	5 082	3 515	211
15 to 19 years	633 696	7 301	4 536	2 765	...	32 085	563 386	6 347	-	2 684	6 103	5 982	9 245	563
20 to 24 years	596 791	55 949	36 034	19 915	...	283 564	209 642	2 742	28	6 288	7 167	4 821	25 278	1 312
25 to 29 years	524 304	65 615	33 140	32 475	...	381 585	53 628	651	88	2 596	4 757	2 108	12 077	1 199
30 to 34 years	443 034	54 103	19 652	34 451	...	351 137	25 162	201	307	1 105	3 681	1 259	5 253	826
35 to 39 years	442 204	53 988	16 717	37 271	...	356 950	19 743	226	438	739	4 389	1 000	3 942	789
40 to 44 years	501 943	66 526	22 054	44 472	...	402 992	18 520	75	1 213	607	5 964	1 097	3 807	1 142
45 to 49 years	521 846	78 077	30 634	47 443	...	410 478	15 750	82	2 769	469	8 030	1 262	3 908	1 021
50 to 54 years	498 786	92 705	45 431	47 274	...	371 310	11 236	51	6 418	377	10 456	1 108	3 813	1 312
55 to 59 years	465 572	111 054	68 176	42 888	...	316 143	7 336	69	11 618	263	12 084	1 425	4 129	1 441
60 to 64 years	417 407	130 665	95 442	35 223	...	241 577	3 552	111	19 769	109	13 910	1 626	4 481	1 607
65 to 69 years	352 217	136 770	109 065	27 705	...	164 595	1 526	5	28 142	43	13 617	2 062	4 147	1 310
70 to 74 years	290 576	133 009	108 794	24 215	...	102 628	817	5	35 956	50	10 760	2 478	3 987	886
75 to 79 years	196 624	97 030	78 996	18 034	...	49 170	389	-	36 656	31	7 422	2 680	2 722	524
80 to 84 years	109 320	54 177	43 556	10 621	...	15 762	279	3	30 027	39	4 270	2 548	1 979	236
85 years and over	65 572	26 640	20 428	6 212	...	7 175	1 018	-	23 926	15	2 339	2 721	1 597	141
14 years and over	6 204 174	1 163 913	732 812	431 101	...	3 487 944	1 070 692	12 165	197 361	15 435	115 806	35 453	91 054	14 351
Under 18 years	2 417 481	1 209	516	693	...	6 569	2 327 863	43 876	6	816	7 309	15 848	13 123	862
Negro														
Male, 1970	958 916	412 028	71 345	340 683	317 582	...	449 008	22 776	3 384	2 202	16 514	19 014	33 547	643
Percent	100.0	43.0	7.4	35.5	33.1	...	46.8	2.4	0.4	0.2	1.7	2.0	3.5	-
Under 5 years	115 387	-	-	-	-	...	100 274	9 740	-	-	360	2 879	2 124	10
5 to 9 years	126 882	-	-	-	-	...	117 223	4 926	-	-	478	2 230	2 013	12
10 to 14 years	117 083	245	37	208	172	...	108 067	3 561	-	-	885	2 689	1 827	9
15 to 19 years	89 813	2 927	608	2 319	1 999	...	76 933	2 711	-	189	2 313	2 932	1 789	19
20 to 24 years	62 370	25 826	4 765	21 061	19 464	...	25 824	958	-	777	3 035	2 553	3 381	16
25 to 29 years	67 700	52 233	7 786	44 447	42 075	...	7 751	362	5	496	2 042	1 530	3 248	33
30 to 34 years	65 055	55 387	7 063	48 324	45 464	...	4 050	163	46	260	1 315	988	2 830	16
35 to 39 years	59 688	51 922	7 077	44 845	42 215	...	3 308	128	40	121	987	583	2 570	32
40 to 44 years	57 641	50 413	7 292	43 121	40 286	...	2 202	84	74	139	1 207	644	2 841	37
45 to 49 years	51 649	45 927	7 222	38 705	36 016	...	1 353	82	125	102	897	556	2 564	43
50 to 54 years	40 876	36 246	6 245	30 001	27 848	...	804	12	314	34	788	440	2 185	53
55 to 59 years	32 660	29 132	5 619	23 513	21 775	...	419	35	257	37	622	300	1 816	42
60 to 64 years	26 495	23 341	5 249	18 092	16 703	...	251	17	405	8	676	286	1 465	46
65 to 69 years	19 939	17 448	5 039	12 409	11 434	...	160	-	555	10	436	134	1 176	20
70 to 74 years	12 799	10 927	3 539	7 388	6 613	...	96	-	412	5	309	206	819	25
75 to 79 years	7 110	5 866	2 123	3 743	3 344	...	58	-	516	-	103	101	451	15
80 to 84 years	3 372	2 619	1 118	1 501	1 325	...	44	-	340	6	31	81	241	10
85 years and over	2 397	1 569	563	1 006	849	...	191	-	295	18	30	82	207	5
14 years and over	622 030	412 028	71 345	340 683	317 582	...	143 896	5 205	3 384	2 202	15 061	11 972	27 865	417
Under 18 years	419 164	1 132	108	1 024	908	...	378 777	20 003	-	53	2 923	9 311	6 922	43
Female, 1970	1 145 763	251 640	94 373	157 267	...	315 515	444 761	23 686	19 607	2 493	25 077	25 111	31 522	6 351
Percent	100.0	22.0	8.2	13.7	...	27.5	38.8	2.1	1.7	0.2	2.2	2.2	2.8	0.6
Under 5 years	114 671	-	-	-	...	-	98 424	10 305	-	-	476	3 418	2 034	14
5 to 9 years	124 460	-	-	-	...	-	114 911	5 061	-	-	512	2 287	1 671	18
10 to 14 years	116 133	77	31	46	...	99	106 528	3 779	-	-	1 170	2 865	1 555	60
15 to 19 years	98 097	2 656	687	1 969	...	5 296	77 135	2 893	3	618	3 191	3 894	2 252	159
20 to 24 years	95 398	20 512	5 156	15 356	...	33 678	26 735	920	7	966	4 285	3 421	4 434	440
25 to 29 years	95 377	30 275	6 179	24 096	...	48 191	7 919	325	30	357	2 714	1 780	3 201	585
30 to 34 years	85 755	29 072	5 352	23 720	...	46 122	4 106	143	119	242	1 902	1 124	2 371	554
35 to 39 years	77 427	27 120	5 394	21 726	...	41 860	3 131	68	184	90	1 517	866	2 016	575
40 to 44 years	73 625	27 502	7 187	20 315	...	38 078	2 153	39	625	57	1 451	812	2 246	662
45 to 49 years	64 602	25 001	9 523	15 478	...	32 317	1 482	50	975	26	1 478	522	2 015	736
50 to 54 years	54 140	21 741	10 242	11 499	...	24 955	903	23	1 691	51	1 536	704	1 819	717
55 to 59 years	43 719	18 543	10 850	7 693	...	17 951	501	58	2 334	19	1 332	599	1 567	815
60 to 64 years	36 264	16 659	10 846	5 813	...	12 426	392	18	2 848	18	1 207	672	1 514	510
65 to 69 years	28 519	14 175	9 629	4 546	...	8 157	125	-	2 997	13	1 043	622	1 110	277
70 to 74 years	17 922	9 222	6 568	2 654	...	3 874	84	4	2 900	6	611	472	646	103
75 to 79 years	10 073	5 142	3 727	1 415	...	1 528	66	-	2 139	14	326	330	475	53
80 to 84 years	5 287	2 519	1 934	585	...	540	29	-	1 361	16	195	329	268	30
85 years and over	4 294	1 424	1 068	356	...	443	137	-	1 394	-	131	394	328	43
14 years and over	812 827	251 640	94 373	157 267	...	315 515	145 090	5 206	19 607	2 493	23 247	17 227	26 524	6 278
Under 18 years	416 800	470	130	340	...	1 135	373 077	21 141	3	178	3 602	10 717	6 335	142

Table 207. Poverty Status in 1969 and Ratio of Family Income to Poverty Level for Persons in Families a Unrelated Individuals, by Family Relationship, Age, and Race: 1970—Continued

(Excludes inmates of institutions, members of Armed Forces living in barracks, college students in dormitories, and unrelated individuals under 14 years. Data bas sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

The State Urban and Rural Standard Metropolitan Statistical Areas of 250,000 or More Central Cities	Total	Below poverty level		Ratio of family (or unrelated individual) income to poverty level						
		Number	Percent of total	Under .50	.50 to .74	.75 to .99	1.00 to 1.24	1.25 to 1.49	1.50 to 1.99	2.00 to 2.99
THE STATE—Continued										
White										
All Persons in Families										
All family members	14 122 609	1 002 615	7.1	386 382	237 227	379 006	496 117	569 437	1 444 811	2 463 367
Under 25 years	6 292 373	551 203	8.8	216 219	127 613	207 371	264 398	307 587	787 798	1 373 480
25 to 44 years	3 426 365	189 303	5.5	77 573	42 196	69 534	101 175	125 237	348 852	910 713
45 to 64 years	3 189 734	125 990	3.9	49 993	32 490	43 507	54 781	64 771	169 490	542 581
65 years and over	1 224 137	136 119	11.1	42 597	34 928	58 594	75 763	71 842	138 671	236 593
Family heads	4 069 135	285 613	7.0	113 024	68 175	105 214	133 958	145 350	355 358	888 637
Under 25 years	200 479	27 989	14.0	12 196	6 821	8 972	10 882	9 921	23 287	48 719
25 to 44 years	1 600 168	115 973	7.2	49 087	25 104	41 782	54 305	63 378	172 237	437 789
45 to 64 years	1 654 450	65 878	4.0	27 294	16 099	22 485	28 227	33 993	89 864	288 690
65 years and over	614 038	75 573	12.3	23 447	20 151	31 975	40 536	38 058	70 162	112 839
Other family members	10 053 474	717 002	7.1	274 358	169 052	273 792	362 159	424 087	1 088 461	2 575 330
Under 6 years	1 496 420	160 116	10.7	62 960	36 815	60 341	75 216	85 659	221 224	477 961
6 to 13 years	2 289 240	225 899	9.9	88 075	51 378	86 446	109 724	127 494	326 093	692 394
14 to 17 years	1 116 338	82 769	7.4	32 376	19 280	31 113	40 884	49 205	123 623	294 470
18 to 21 years	740 221	37 945	5.1	14 374	9 368	14 203	18 410	23 690	61 958	170 103
22 to 24 years	449 675	16 485	3.7	6 238	3 951	6 296	9 282	11 618	31 613	89 833
25 to 44 years	1 826 197	73 330	4.0	28 486	17 092	27 752	46 870	61 859	176 615	472 924
45 to 64 years	1 535 284	60 112	3.9	22 699	16 391	21 022	26 554	30 778	79 626	253 891
65 years and over	610 099	60 546	9.9	19 150	14 777	26 619	35 227	33 784	67 709	123 754
Persons in Families With Male Head										
All family members	12 854 765	646 738	5.0	233 178	156 075	257 485	402 213	496 764	1 333 613	3 253 391
Under 25 years	5 673 176	306 015	5.4	108 707	73 007	124 301	206 397	266 018	723 028	1 679 289
25 to 44 years	3 179 477	127 155	4.0	50 208	28 536	48 411	84 644	112 371	327 034	871 486
45 to 64 years	2 943 175	98 086	3.3	38 491	25 586	34 009	44 526	54 892	150 029	496 946
65 years and over	1 058 937	115 482	10.9	35 772	28 946	50 764	66 646	63 483	122 922	205 670
Family heads	3 638 034	184 368	5.1	68 479	45 076	70 813	104 538	122 435	316 308	812 921
Under 25 years	177 662	15 678	8.8	6 430	4 133	5 115	7 971	8 763	21 425	46 325
25 to 44 years	1 451 499	60 172	4.1	24 102	13 314	22 756	40 510	53 578	157 094	414 006
45 to 64 years	1 481 622	44 888	3.0	18 445	11 076	15 367	20 510	26 430	75 260	255 587
65 years and over	527 251	63 630	12.1	19 502	16 553	27 575	35 547	33 664	62 521	98 003
Other family members	9 216 731	462 370	5.0	164 699	110 999	186 672	297 675	374 329	1 006 713	2 439 470
Under 6 years	1 374 982	88 556	6.4	31 005	21 117	36 434	61 235	78 492	211 504	466 554
6 to 13 years	2 064 900	118 370	5.7	41 246	27 546	49 578	85 968	111 017	301 996	662 976
14 to 17 years	991 629	45 097	4.5	16 158	10 674	18 265	29 205	38 957	107 594	270 518
18 to 21 years	656 441	25 069	3.8	8 910	6 355	9 803	13 969	18 673	52 265	150 767
22 to 24 years	407 562	13 246	3.3	4 958	3 182	5 106	8 049	10 116	28 244	82 149
25 to 44 years	1 727 978	66 983	3.9	26 106	15 222	25 655	44 134	58 793	169 940	457 480
45 to 64 years	1 461 553	53 198	3.6	20 046	14 510	18 642	24 016	28 462	74 769	241 359
65 years and over	531 686	51 852	9.8	16 270	12 393	23 189	31 099	29 819	60 401	107 667
Persons in Families With Female Head										
All family members	1 277 844	355 877	27.8	153 204	81 152	121 521	93 904	73 673	120 998	209 976
Under 25 years	619 197	245 188	39.6	107 512	54 606	83 070	58 001	41 569	64 770	94 191
25 to 44 years	246 888	62 148	25.2	27 365	13 660	21 123	16 531	12 866	21 818	39 227
45 to 64 years	246 559	27 904	11.3	11 502	6 904	9 498	10 255	9 878	19 461	45 635
65 years and over	165 200	20 637	12.5	6 825	5 982	7 830	9 117	8 359	14 949	30 923
Family heads	431 101	101 045	23.4	43 545	23 099	34 401	29 412	22 915	39 250	74 116
Under 25 years	22 817	12 311	54.0	5 766	2 688	3 857	2 911	1 158	1 862	2 394
25 to 44 years	148 669	55 801	37.5	24 985	11 790	19 026	13 795	9 800	15 143	23 783
45 to 64 years	172 828	20 990	12.1	8 849	5 023	7 118	7 717	7 563	14 604	33 103
65 years and over	86 787	11 943	13.8	3 945	3 598	4 400	4 989	4 394	7 641	14 836
Other family members	846 743	254 832	30.1	109 659	58 053	87 120	64 492	49 758	81 748	135 860
Under 6 years	121 438	71 560	58.9	31 955	15 698	23 907	13 981	7 167	9 720	11 407
6 to 13 years	224 340	107 529	47.9	46 829	23 832	36 868	23 756	16 477	24 097	29 418
14 to 17 years	124 709	37 672	30.2	16 218	8 606	12 848	11 679	10 248	16 029	23 952
18 to 21 years	83 780	12 877	15.4	5 464	3 013	4 400	4 441	5 017	9 693	19 336
22 to 24 years	42 113	3 239	7.7	1 280	769	1 190	1 233	1 502	3 369	7 684
25 to 44 years	98 219	6 347	6.5	2 380	1 870	2 097	2 736	3 066	6 675	15 444
45 to 64 years	73 731	6 914	9.4	2 653	1 881	2 380	2 538	2 316	4 857	12 532
65 years and over	78 413	8 694	11.1	2 880	2 384	3 430	4 128	3 965	7 308	16 087
Unrelated Individuals										
All unrelated individuals	1 430 915	440 070	30.8	204 093	122 431	113 546	96 755	78 194	120 368	203 370
14 to 24 years	183 358	85 352	46.5	57 193	17 486	10 673	10 674	7 342	15 685	26 472
25 to 44 years	300 601	39 520	13.1	23 569	8 241	7 710	10 369	6 742	18 495	44 109
45 to 64 years	421 952	83 606	19.8	41 867	21 315	20 424	20 117	15 330	35 512	74 508
65 years and over	525 004	231 592	44.1	81 464	75 389	74 739	55 595	40 780	50 676	58 481
Male unrelated individuals	543 229	130 412	24.0	64 070	32 729	33 613	30 969	22 281	42 280	79 152
14 to 24 years	85 367	41 074	48.1	25 942	9 102	6 030	5 850	3 891	7 330	11 594
25 to 44 years	168 972	17 145	10.1	10 099	3 850	3 196	4 568	2 973	9 765	24 971
45 to 64 years	150 120	22 653	15.1	11 296	5 799	5 558	5 660	4 022	9 736	24 240
65 years and over	138 761	49 540	35.7	16 733	13 978	18 829	14 891	11 395	15 449	18 347
Female unrelated individuals	887 695	309 658	34.9	140 023	89 702	79 933	65 786	47 913	78 088	124 218
14 to 24 years	97 991	44 278	45.2	31 251	8 384	4 643	4 824	3 451	8 355	14 878
25 to 44 years	131 629	22 375	17.0	13 470	4 391	4 514	5 801	3 769	8 730	19 138
45 to 64 years	271 832	60 953	22.4	30 571	15 516	14 866	14 457	11 308	25 776	50 268
65 years and over	386 243	182 052	47.1	64 731	61 411	55 910	40 704	29 385	35 227	40 134

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then once, information was obt
on the reason for termination o
first marriage. Persons shown
"known to have been widowed"
clude widowed persons and those
rently married or divorced per
whose first marriage ended in wi
hood. Persons shown as "know
have been divorced" include div
persons and those currently marri
widowed persons whose first ma
did not end in widowhood.

was obtained
ation of the
shown as
idowed" in-
those cur-
rced persons
ed in widow-
"known to
lude divorced
ly married or
irst marriage
d.

HOUSEHOLD, RELATIONSHIP HOUSEHOLD HEAD, AND GROUP QUARTERS

The data on household relatio
and group quarters were derived
answers to question 2 and from i
mation about the type of
quarters (see facsimiles of ques
naire item and instructions,
App-37).

ONSHIP TO
AND

relationship
derived from
d from infor-
e of living

The question on household
tionship was asked of all persons
item on type of unit was filled b
enumerator or in the census offi
each household.

of question-
ctions, page
ousehold rela-
persons. The
filled by the
us office for

Household.—A household includ
the persons who occupy a grou
rooms or a single room which c
tutes a housing unit. A group of r
or single room is regarded as a ho
unit when it is occupied as sep
living quarters, that is, when th
cupants do not live and eat with
other persons in the structure,
when there is either (1) direct a
from the outside of the build
through a common hall or (2)
plete kitchen facilities for the
sive use of the occupants of
household.

includes all
a group of
which consti-
oup of rooms
as a housing
as separate
when the oc-
eat with any
ructure, and
direct access
building or

The average population per ho
hold is obtained by dividing the
lation in households by the numb
household heads.

or (2) com-
er the exclu-
ants of the

n per house-
ing the popu-
e number of

Relationship to head of household.—Detailed categories of relationship to head of household are recognized in this report.

1. *Head of household.*—One person in each household is designated as the "head", that is, the person who is regarded as the head by the members of the household. However, if a married woman living with her husband was reported as the head, her husband was considered the head for the purpose of simplifying the tabulations.

   Two types of household head are distinguished—the head of a family and a primary individual. A family head is a household head living with one or more persons related to him by blood, marriage, or adoption. A primary individual is a household head living alone or with nonrelatives only.

2. *Wife of head.*—A woman married to and living with a household head, including women in common-law marriages as well as women in formal marriages. The number of women in this category may not always be the same as the number of "husband-wife households" and the number of "husband-wife families," because of differences in the weighting of the sample data.

3. *Child of head.*—A son, daughter, stepchild, or adopted child of the head of the household of which he is a member, regardless of the child's age or marital status. The category excludes sons-in-law and daughters-in-law. (See definition of "own child" below.)

4. *Grandchild of head*

5. *Parent of head or wife*

6. *Son- or daughter-in-law of head*

7. *Brother or sister of head or wife*

8. *Other relative of head.*—Any person related to the household head by blood, marriage, or adoption, who is not included in one of the specific relationship categories shown in the particular table.

9. *Secondary individuals in households.*—The categories "lodger (or partner)" and "resident employee" are shown separately.

Group quarters.—All persons not living in households are classified by the Bureau of the Census as living in group quarters. Persons living in group quarters are classified in this report as to type of group quarters. Institutions constitute a subcategory of group quarters and persons under care or custody in institutions are classified as "inmates."

Inmates.—Persons under care or custody at the time of enumeration in homes, schools, hospitals, or wards for juveniles, the physically handicapped or the mentally handicapped; homes or hospitals for mental, tuberculosis, other chronic disease patients; homes for unwed mothers; homes for the aged and dependent, including nursing, convalescent, and rest homes; and correctional institutions are enumerated as "patient or inmates" of an institution—regardless of their length of stay in that place and regardless of the number of people in the particular place. Inmates of selected types of institutions are shown separately in this report.

Resident of other group quarters.—This category includes all persons living in group quarters other than institutions. A living quarters is called a group quarters if there are five or more persons unrelated to the head; or, when no head is designated, if six or more unrelated persons share the unit. Rooming and boarding houses, communes, workers' dormitories, and convents or monasteries fall into this category. Persons residing in certain other types of living arrangements are classified as living in group quarters regardless of the number or relationship of people in the unit. These include persons residing in military barracks, on ships, in college dormitories, or in sorority and fraternity houses; patients in short-term medical and surgical wards of hospitals who have no usual residence elsewhere; staff members in institutional quarters; and persons enumerated in missions, flophouses, Salvation Army shelters, railroad stations, etc. Selected types of group quarters are shown separately in this report.

Comparability with earlier census data.—The 1970 definition of a household differs from that used in the 1960 census only in the change in the definition of housing unit to require "complete kitchen facilities" now, as compared with "cooking equipment" previously. The definitions for 1970 group quarters are basically the same as those for 1960 but are more specific.

FAMILY AND UNRELATED INDIVIDUAL

Family and subfamily.—According to 1970 census definitions, a family consists of a household head and one or more other persons living in the same household who are related to the head by blood, marriage, or adoption; all persons in a household who are related to the head are regarded as members of his (her) family. A "husband-wife family" is a family in which the head and his wife are enumerated as members of the same household. Not all households contain families, because a household may be composed of a group of unrelated persons or one person living alone. The mean size of family is derived by dividing the number of persons in families by the total number of families.

A subfamily is a married couple with or without children, or one parent with one or more single children under 18 years old, living in a household and related to, but not including, the head of the household or his wife. The most common example of a subfamily is a young married couple sharing the home of the husband's or wife's parents. Members of a subfamily are also included among the members of a family. The number of subfamilies, therefore, is not included in the number of families.

A "family" has the same meaning in the 1970 census as a "primary family" in the 1960 census. Secondary families were defined in the 1960 census as groups of persons related to each other but unrelated to the household head, such as lodgers, friends, partners, or resident employees. However, the number of such families became so small (95,000 in 1969, according to the Current Population Survey) that the Bureau of the Census decided to include persons in these families in the count of secondary individuals for 1970.

Own child and related child.—Statistics on the presence of "own" children are shown in this report for families, subfamilies, and women of childbearing age. An own child is defined in the 1970 census, as in 1960, as a single (never married) son, daughter, stepchild, or adopted child under 18 years old of a family or subfamily head. The number of own children under 5 years old shown for women of childbearing age is limited to those living with mothers who have ever been married, whereas the number of own children in families or subfamilies includes those living with parents who have never married. Certain tables show the number of "related children" under 18 years old in the family. This includes not only "own" children, as defined above, but also all other family members, regardless of marital status, who are under 18 years old (except the head or wife). The mean number of related children under 18 in table 214 is derived by dividing the number of children under 18 in families by the number of families having children of that age.

Unrelated individual.—An unrelated individual is a member of a household who is not related to anyone else in the household, or a person living in group quarters who is not an inmate of an institution. Unrelated individuals who are not household heads are called "secondary individuals." Persons who are related to each other but not related to the head of the household (e.g., a family of lodgers or an employee and his wife) are classified as "secondary individuals." In the tables on income statistics, unrelated individuals are limited to those 14 years of age or older. In the statistics on poverty status of unrelated individuals, college students living in dormitories and members of the Armed Forces living in barracks are excluded.

Affidavit of Garry W. Bickel in Support of Motion.

[SAME TITLE]

1. I am a Research Associate employed by the Bureau of Social Science Research, Inc., a private corporation located in Washington, D.C. I hold a Ph.D in Economics.

2. The Bureau of Social Science Research was founded approximately 23 years ago by the present director, Robert T. Bower.

3. The function of the BSSR is to conduct research in the social science area and to contribute to the advancement of social science theory and methodology. Approximately 80 per cent of the work is survey research. The Bureau is supported by government contracts and through private foundation grants.

4. In my capacity as a Research Associate at the Bureau of Social Science Research, I recently obtained U.S. Census data from the Bureau of Census report titled *Metropolitan Housing Characteristics* (HC(2)Series, #149) describing housing conditions.

5. My research documents the relationship of a household's level of income with the probability it lives in a crowded dwelling unit.

6. The Census data, however does not provide the detailed, three-way cross-tabulation of households by level of household income, size of household, and size of housing unit, which would optionally display this relationship.

Relevant data is instead taken from tables keyed to the rental costs of housing units.

This is possible because these tables correlate rental price levels with data on the number of persons per room and on the median household incomes. Because these median incomes rise substantially with each level of rent

paid, irrespective of family size, these rent levels can be safely used to represent the effect of rising income levels.

7. These Census data tables are appended to this affidavit.

8. The results of these computations are shown on the attached Table 1.

9. The first row of the table is for rental units costing less than $80 in 1970 (irrespective of size). A very large proportion of these cheapest units were occupied by single persons (45%); the median size of households occupying such units was only 1.7 persons. Thus the crowding factor is largely obscured for this group of renter households, since we are not able to measure it for different sized families separately, even though the average income of the group is quite low. By the definitions of "crowded" and "very crowded" living conditions adopted here (more than one person per room, and more than 1.5 persons per room, respectively) a single-person household cannot be "crowded," no matter how cramped the living space involved may be.

10. The remainder of the table shows clearly the strong relationship that exists between relative prevalence of crowding and average level of household income. As household incomes go up, the proportion of households living in "crowded" or in "very crowded" conditions goes down. Comparing the lowest- to highest-income groups represented here, the likelihood of being "crowded" is more than three times as great for the lower-income households, and the likelihood of being "very crowded" nearly four times as great.[1]

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[1] These relative measures would be greater still if single-person households could be separated from the grouped data, since they are proportionately much more numerous—and tending to mask the crowding effect as here defined—in the lower-income household groups here represented.

11. Finally, the attached graph illustrates the extremely close statistical relationship that exists between the prevalence of residential crowding and the average level of household income, as it shows up in these data for the New York City metropolitan area. If the relative prevalence of crowding is regarded as the "dependent" variable, to be "explained" by the median level of household income, as the "independent" variable, for groups of renter households, it appears that the explanation is nearly perfect. That is, the statistically fitted curve is nearly a perfect fit or, alternatively, the correlation observed between the two variables is nearly a perfect correlation.

12. It can thus be asserted with great confidence that the degree or prevalence of residential crowding occurring among renter households in the New York City metropolitan area depends very strongly on the level of income available to the household. For the particular arrangement of household groups observed here, the level of income alone is substantially more important than all other possible determining factors combined. This would probably hold true for more detailed groupings of households as well.

(Sworn to by Gary W. Bickel, July 10, 1974.)

TABLE 1

COMPARISON OF INCOME LEVEL AND "CROWDING" FOR RENTER HOUSEHOLDS IN THE NEW YORK CITY SMSA, BY RENTAL LEVEL, 1970

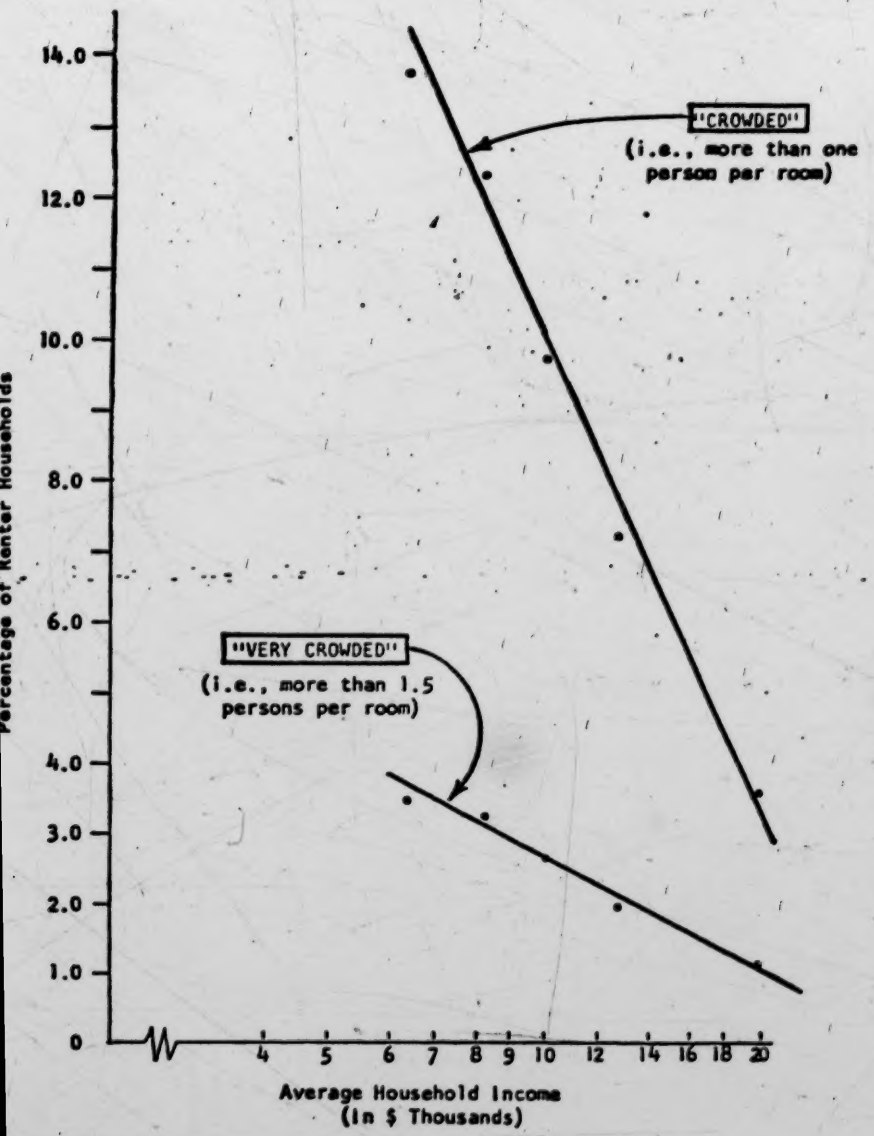
Rental Level ($ per month)	Number of Renter Households (In thousands) (1)	Percentage of Rental Units "Very Crowded" (more than 1.5 persons/room) (2)	Percentage of Rental Units "Crowded" (more than one person/room) (3)	Median Household Income (4)	Median Household Size (no. of persons) (5)	Income Per Member of Household Median (4) ÷ (5) (6)
Primarily Single-Person Households:						
Below $80	456	2.8%	9.3%	$ 4,300	1.7	$2,529
Primarily Multi-Person Households:						
$ 80-119	877	3.4%	13.6%	$ 6,400	2.3	$2,783
120-149	383	3.2	12.2	8,200	2.3	3,565
150-199	395	2.6	9.6	10,000	2.3	4,348
200-299	214	1.9	7.1	12,600	2.3	5,478
300 and over	75	1.1	3.5	19,800	2.2	9,000

Source: U.S. Bureau of the Census, 1970 Census of Housing: *Metropolitan Housing Characteristics, New York, N.Y. SMSA* (Census series HC(2) number 149), Table A-2: "Gross Rent of Renter-Occupied Housing Units."

Table, Exhibit "B" to Bickel Affidavit.

(See opposite page ☞)

PERCENTAGE OF RENTAL UNITS "CROWDED" AND "VERY CROWDED" IN THE NEW YORK CITY SMSA, BY MEDIAN LEVEL OF HOUSEHOLD INCOMES AT DIFFERENT RENTAL COST LEVELS, 1970



Source: accompanying table.

Metropolitan Housing Characteristics—New York, N. Y., 1970 Census, Exhibit "C" to Bickel Affidavit.

(See opposite ☞)

Table A–2. Gross Rent of Renter Occupied Housing Units: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

The SMSA	Total	Less than $50	$50 to $59	$60 to $69	$70 to $79	$80 to $99	$100 to $119	$120 to $149	$150 to $199	$200 to $299	$300 or more	No cash rent	Median (dollars)
Specified renter occupied[1]	2 444 844	69 754	69 788	187 431	199 336	683 531	393 797	383 948	395 881	216 881	75 888	44 864	113
ROOMS													
1 room	130 788	10 209	6 979	11 805	9 706	21 155	17 512	21 770	19 470	9 079	1 676	1 419	106
2 rooms	232 876	8 466	10 042	17 221	21 257	42 356	31 562	36 801	35 972	22 483	4 290	2 500	110
3 rooms	804 685	16 967	24 414	49 372	75 035	177 141	129 144	123 941	127 822	53 738	18 213	8 918	109
4 rooms	738 869	10 930	20 937	41 783	62 048	155 932	126 668	106 397	115 667	63 998	20 978	13 351	111
5 rooms	349 651	2 465	5 740	13 610	24 460	85 499	84 662	62 376	56 068	33 006	13 880	7 845	118
6 rooms	139 956	558	1 413	3 200	5 775	17 562	20 068	25 316	29 967	22 311	8 748	5 018	142
7 rooms	31 359	91	157	314	752	2 295	3 283	4 937	7 283	6 341	3 816	2 090	169
8 rooms or more	16 168	90	40	126	353	583	878	1 404	2 752	3 565	3 654	2 923	217
Median	3.4	2.9	2.2	3.3	3.4	3.5	3.6	3.6	3.6	3.8	4.1	4.2	...
PERSONS													
1 person	704 090	21 998	25 371	62 037	76 378	142 767	93 203	96 414	89 086	49 605	17 269	10 874	100
2 persons	748 257	16 645	19 692	59 565	56 946	143 667	114 957	116 789	134 747	71 521	27 797	12 025	117
3 persons	404 537	3 278	7 126	15 435	26 414	79 749	70 672	67 025	72 986	38 692	13 308	6 872	118
4 persons	298 752	1 837	3 838	10 251	19 961	58 597	54 823	50 559	52 159	30 101	10 131	6 495	119
5 persons	151 027	1 090	1 967	5 729	10 700	31 607	30 107	26 564	22 552	12 692	4 033	4 025	115
6 persons or more	140 564	925	1 908	4 453	9 227	26 534	30 035	25 591	23 471	11 910	2 717	3 773	117
Median	2.2	1.7	1.5	1.7	1.9	2.2	2.4	2.3	2.3	2.3	2.2	2.4	...
Units with roomers, boarders, or lodgers	58 026	7 015	1 554	3 021	3 671	10 239	8 822	8 625	9 510	7 406	3 168	985	121
PLUMBING FACILITIES BY PERSONS PER ROOM													
With all plumbing facilities	2 375 645	59 790	62 871	158 982	191 [illegible]	669 247	385 571	377 272	391 392	213 105	74 837	42 689	114
0.50 or less	965 987	24 998	26 450	67 654	99 830	285 948	130 673	129 919	133 738	83 506	37 627	19 638	108
0.51 to 1.00	1 173 434	32 998	21 650	67 849	79 296	223 660	198 483	201 887	220 142	114 508	34 589	17 191	119
1.01 to 1.50	195 738	1 569	3 244	8 230	15 762	45 271	42 910	33 965	27 749	11 042	1 779	4 237	110
1.51 or more	66 450	1 044	1 527	3 249	4 999	14 348	13 505	11 501	9 763	4 049	842	1 623	111
Lacking some or all plumbing facilities	68 799	9 964	6 831	10 669	3 469	13 274	8 226	5 670	3 609	1 416	618	1 375	79
0.50 or less	15 979	2 008	1 690	2 375	2 687	2 903	1 685	1 063	895	391	248	464	77
0.51 to 1.00	45 107	7 528	4 536	7 005	4 506	8 851	5 302	3 558	2 142	837	153	691	77
1.01 to 1.50	2 707	61	126	280	307	541	555	485	231	79	6	86	102
1.51 or more	4 908	369	309	829	569	979	684	564	341	109	11	134	85
BEDROOMS													
None	182 358	11 294	7 898	14 556	12 611	27 967	24 226	31 888	31 382	16 579	2 362	1 595	113
1	1 056 414	25 240	34 369	67 681	98 248	225 460	164 732	160 180	164 991	77 727	25 151	12 635	109
2	844 363	12 491	21 048	44 082	67 695	169 016	143 462	125 446	138 903	76 790	29 569	15 861	114
3 or more	361 224	2 462	4 740	11 498	20 068	60 182	62 079	62 723	62 580	42 446	19 415	13 031	126
YEAR STRUCTURE BUILT													
1969 to March 1970	20 694	233	250	554	895	1 468	1 358	1 748	4 719	6 437	2 800	232	189
1965 to 1968	103 802	1 095	1 255	2 604	3 709	5 699	4 486	10 702	30 180	29 942	12 759	1 371	186
1960 to 1964	208 681	1 236	1 648	5 915	7 361	12 750	11 162	22 211	67 107	55 400	21 169	2 702	180
1950 to 1959	300 187	5 248	3 947	7 510	15 456	37 411	34 409	46 933	84 916	45 086	14 210	5 061	148
1940 to 1949	307 376	4 337	5 278	10 344	18 862	58 080	54 814	63 919	61 022	21 236	4 830	4 654	120
1939 or earlier	1 503 604	37 605	57 324	110 504	153 073	367 113	287 568	237 429	147 057	56 420	19 467	30 044	101
ELEVATOR IN STRUCTURE													
4 floors or more	1 618 585	38 891	50 518	98 655	145 160	347 057	264 357	219 536	225 835	147 035	63 907	17 634	109
With elevator	1 019 881	15 551	15 354	36 011	63 411	166 873	151 414	160 769	201 426	138 428	62 033	8 611	131
Walk-up	598 704	23 340	35 164	62 644	81 749	180 184	112 943	58 767	24 409	8 607	1 874	9 023	90
1 to 3 floors	825 774	12 596	17 537	39 162	53 462	135 568	130 142	160 701	172 021	66 507	12 590	25 488	122
COMPLETE BATHROOMS													
1 and 1 1/2	2 199 244	31 753	53 858	114 924	180 390	452 296	373 361	365 834	372 613	181 294	36 226	36 695	113
2 or more	107 535	524	451	700	1 069	2 881	4 463	7 524	15 230	31 353	37 938	5 402	258
None or also used by another household	137 628	16 837	15 955	21 788	18 372	27 675	15 627	10 447	5 809	2 175	670	2 273	77
INCOME IN 1969													
Less than $2,000	337 230	19 917	20 324	34 498	42 517	78 509	49 112	39 010	29 147	12 723	4 169	7 304	92
$2,000 to $2,999	168 192	7 081	9 236	16 200	21 222	43 888	27 851	19 906	13 583	4 784	1 321	3 120	93
$3,000 to $3,999	162 453	4 714	7 501	14 050	17 895	41 770	29 160	22 065	15 540	5 303	1 271	3 184	97
$4,000 to $4,999	157 394	3 907	6 393	13 199	17 690	38 361	28 281	22 379	16 343	6 277	1 351	3 213	99
$5,000 to $5,999	174 986	3 304	5 516	11 807	18 447	42 733	32 718	26 741	20 321	8 000	1 728	3 671	102
$6,000 to $6,999	170 664	2 449	4 258	10 197	16 514	41 332	31 256	27 413	23 260	8 943	1 859	3 183	106
$7,000 to $9,999	452 591	4 615	8 722	19 290	32 778	94 100	82 349	84 259	80 179	32 362	5 956	7 981	115
$10,000 to $14,999	458 198	2 466	5 437	12 639	22 310	70 716	75 219	87 286	109 182	54 810	10 573	7 540	133
$15,000 to $24,999	273 779	955	1 924	4 810	8 633	26 751	32 456	45 347	72 552	57 252	19 425	3 704	160
$25,000 or more	88 857	326	291	741	1 350	4 361	5 425	8 536	14 894	24 067	27 602	1 164	233
Median	$7 400	$2 700	$3 700	$4 300	$5 000	$5 900	$7 000	$8 200	$10 000	$12 600	$19 800	$6 500	...
YEAR MOVED INTO UNIT													
1969 to March 1970	450 025	5 757	6 619	14 324	20 862	64 581	65 749	75 726	99 699	64 991	23 322	8 387	137
1968	283 454	3 601	4 055	9 075	15 285	44 318	43 408	52 382	60 943	34 606	11 424	4 357	131
1967	226 952	2 826	3 654	7 834	13 389	40 108	37 516	42 635	44 612	23 319	7 933	3 126	125
1965 and 1966	366 054	5 635	7 391	16 611	27 333	73 788	63 613	62 398	60 938	32 440	11 036	4 871	116
1960 to 1964	449 254	8 406	10 585	22 896	37 309	95 351	78 025	70 982	69 401	35 091	13 315	7 893	112
1950 to 1959	366 905	10 558	15 166	27 372	40 271	87 846	61 817	50 718	40 751	18 074	5 800	8 532	100
1949 or earlier	301 763	12 331	22 794	39 300	45 382	76 860	43 323	28 956	17 308	6 301	2 004	7 204	86
GROSS RENT AS PERCENTAGE OF INCOME													
Less than 10 percent	294 371	13 117	16 137	27 422	36 244	71 701	49 487	35 711	24 726	13 134	6 694	...	95
10 to 14 percent	471 303	7 325	12 188	26 009	40 305	105 949	84 930	77 022	73 821	33 048	10 706	...	110
15 to 19 percent	467 226	4 998	7 940	18 332	29 100	76 576	67 367	73 279	78 720	39 143	11 771	...	120
20 to 24 percent	278 004	4 356	6 076	11 318	16 751	45 850	44 244	48 924	59 735	31 525	9 245	...	126
25 to 34 percent	309 652	6 682	7 629	14 093	19 584	51 656	46 407	50 966	61 965	38 609	12 051	...	125
35 percent or more	572 279	10 922	16 902	35 205	50 343	115 100	89 740	86 983	88 195	55 487	23 402	...	113
Not computed	111 507	2 354	2 830	5 052	7 029	15 709	11 622	10 057	7 859	3 545	1 386	44 064	101
AIR CONDITIONING													
Room unit(s)	746 873	3 331	5 676	14 401	25 507	80 969	92 097	132 969	200 867	134 399	41 422	15 235	153
Central system	57 921	147	96	222	434	1 046	1 422	2 250	7 252	20 157	24 029	866	278
None	1 639 613	45 636	64 492	122 789	173 890	400 837	299 932	248 586	185 533	60 266	9 383	28 269	100

[1]Excludes one-family homes on 10 acres or more.

POOR COPY

Affidavit of John T. Hand in Support of Motion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

JOHN T. HAND, being duly sworn, deposes and says that:

1. Deponent is a member of the Bar of this Court; deponent resides at 4 Valley Trail, Croton-on-Hudson, New York. Deponent is the Director of the Civil Division and Westchester Legal Services Project of The Legal Aid Society of Westchester County (hereafter, the Society), which represents plaintiffs herein. Deponent makes this affidavit on behalf of plaintiffs' motion for summary judgment, and on personal knowledge of the facts and circumstances stated herein, except as to matters stated to be on information and belief and as to such matters he believes them to be true.

2. Deponent has been associated with the Society as an attorney since March, 1968, and, in his employment, has been a staff attorney in various branch offices and the Research & Appeals Bureau of the Society until his appointment as Director of the Civil Division in December, 1973.

3. Deponent is responsible for the operation of the Civil Division of the Society, including the operations of the Society's Divorce Unit. The Civil Division of the Society has handled divorce cases since at least the inception of the federally funded Westchester Legal Services Project in 1968 for eligible persons in Westchester County. Since

September 19
centralized di
staff attorney
sistants and b
lawyers. De
Esq., attorne
present time,
attorney and

1969, divorce matters have been handled by a divorce unit with but one staff attorney. The ney is assisted by secretarial and paralegal as- d by a fluctuating but small number of volunteer

4. In Febr
in the Divorc
backlog of cas
wit: in excess
ever, containe
to be ineligib

Deponent is informed by Marsha Greenfield, ney-in-charge of the Divorce Unit that at the ne, she is helped by one part-time volunteer nd a full-time summer law student-clerk.

bruary, 1974, deponent directed that new cases rce Unit be limited to very few due to the large cases which had accumulated up to that time, to ess of 400 open files. Some of these files, how- ined applications by persons since determined gible for legal services.

5. Recently
funding of ou
backlog of o
ponent direct
the Divorce U
1974, which i
annexed here

tly, due to the uncertainties of continued federal our legal services project and due to continued

6. The Div
deponent is i
the present
thereon. It s
views have b
list, no repre
eligibility for

over 200 apparently eligible open cases, de- ected that no additional cases be accepted by e Unit. A copy of a form letter dated June 15, h is given to applicants to the Divorce Unit, is reto marked Exhibit "A".

Divorce Unit presently has a waiting list, and s informed by Marsha Greenfield, Esq., that at t time there are approximately 105 names t should be noted, however, that since no inter- been conducted with persons on the waiting presentation can be made as to such persons' for legal services.

7. Deponen
doubt that th
eligible for le
presently bei

nent can represent to this Court without any there are many persons in Westchester County legal services who desire divorces who are not being served by the Society.

(Swor

vorn to by John T. Hand, June 24, 1974.)

Letter From John T. Hand to Applicants to Legal Aid Divorce Unit, Exhibit "A" to Hand Affidavit.

THE LEGAL AID SOCIETY OF WESTCHESTER COUNTY
56 Grand Street
White Plains, New York 10601

(914) RO. 1-9200

June 15, 1974

Dear Madam (Sir)

Due to the uncertainties of continued funding and present workload, we are unable to handle your request for legal services at this time.

We will be happy to retain your name and address so that if we are in a position to assist you in the future, we will contact you. However, it is important that you understand that you are not to rely on our help to give you such services unless and until we contact you.

Very truly yours,

JOHN T. HAND
John H. Hand
Director of Civil Division

JTH:fb

Affidavit of Linda Harmon in Support of the Constitutionality of 18 NYCRR § 352.30(d).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Civ. 3423 A.B.

ROSE HURLEY, et al.,

Plaintiffs,

against

BARRY VAN LARE, et al.,

Defendants.

STATE OF NEW YORK }
COUNTY OF ALBANY } ss.:

LINDA HARMON, being duly sworn, says and deposes:

1. I am a Senior Program Specialist for the New York State Department of Social Services—Bureau of Program Development. I have a Bachelor of Science Degree in Home Economics from the State University College in Buffalo and have 20 hours towards my Master in Home Economics. I have been employed by the State Department of Social Services for four years and previously was employed by the Erie County Department of Social Services for five and one half years.

2. In my official capacity I have had experience and acquaintance with the establishment and operation of program policies and standards for the New York State Department of Social Services (hereinafter "the Department").

3. Under present New York State Law and Regulation maximum allowances for shelter (except, in certain cases, for fuel) for public assistance recipients are established by local social service officials. Shelter allowances are granted as paid up to the agency maximum; shelter allowances may exceed the agency maximum when exceptions are granted by the local officials. The rent schedules in effect in all 58 local districts have been submitted to the court. To the knowledge of the Department only two actions have ever been brought against local districts challenging the adequacy of rental schedules, one resulting in judgment in favor of the local district (*Bronson* v. *Barbaro,* Supreme Court, Nassau County), the other was withdrawn upon the local agency's adoption of a revised shelter schedule. The Department believes that its current shelter policy makes sufficient funds available to public assistance recipients for them to obtain adequate housing to the extent that it is available. To the extent some public assistance recipients reside in inadequate housing, the solution does not lie in merely raising the maximum amount of shelter allowances. In this regard it is noted that the over 93% of public assistance recipients have a shelter allowance that meets their full shelter costs. It is further noted that a local agency's maximum rent schedule is known by many local landlords some of whom make it a practice to raise rents to the amount of the maximum. Such a practice has a multitude of nefarious effects including increased expenditure of public funds without any benefits to welfare recipients and the raising of rents for lower income families who are not on public assistance thus causing segregation of public assistance recipients in buildings and neighborhoods inhabited almost totally by persons receiving public assistance.

4. It has long been recognized that persons living together experience a reduction in per capita living costs.

This has been borne out in studies done by agencies of the federal government which collect such data (Bureau of Census, *Current Population Reports;* Bureau of Labor Standards, *Consumer Pricing Index*) and, with particular regard to shelter, by studies made by this Department and the New York City Department of Social Services submitted herewith. The economy of scale is attributable to all persons in the household unit equally. The amount of public assistance monies allowable for shelter are specifically identifiable and the pro-ration of the shelter allowance accurately reflects the percentage of people residing in the home who are entitled to have their shelter needs met. Accordingly, Commissioner Lavine and the Department fulfill their statutory obligations to determine need and render asistance only to those people entitled thereto.

5. Historically, another purpose of 18 NYCRR 352.30(d) is that of encouraging public assistance recipients to take in paying boarders and lodgers so as to reduce need for public assistance. The motivation for such policy is the desire to conserve public funds. In addition, the policy encourages the recipient to engage in an income producing activity in the hope they will ultimately remove themselves from the public assistance rolls or reduce their dependence on public assistance (See Department Bulletin 134(d), attached hereto, interpreting Department Regulation 352.30(d) formerly 352.3). Accordingly, so long as recipients do not create overcrowded conditions endangering health and safety or causing neglect of children, they are allowed and encouraged to take in paying boarders and lodgers. The exemption of $15.00 monthly income from lodgers, and up to $60.00 monthly for boarders, is simultaneously a result of the state's desire to encourage the taking in of paying boarders and lodgers and a recognition that a cognizable expense may result from this income-

producing activity. When the person residing in the public assistance household does not contribute even the $15.00 minimum payment for lodging, the policy, as stated above in paragraph 4, is to pro-rate the amount the public assistance unit receives for shelter so as to correspond to that unit's utilization of the premises.

6. Certain changes in policies relating to rent are being considered by the Department. Most notably, there is the proposed state mandated schedule of rent ceilings which presently appears in NYCRR 352.3(a). It is presently planned that this schedule will become effective state-wide on January 1, 1975. (Fourteen counties have adopted the schedule as their locally established schedule under 352.3(a) as presently in force). It should be noted that Regulation 352.30(d) remains in effect.

(Sworn to by Linda Harmon, June 25, 1974.)

Affidavit of Marvin Rachlin in Support of the Constitutionality of 18 NYCRR § 352.30(d).

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Index No. 73C 699

ANNIE TAYLOR, individually and on behalf of her minor, dependent child, MARGARET TAYLOR; CHARLOTTE OTEY, individually and on behalf of her minor, dependent child, KEVIN OTEY, and on behalf of all other persons similarly situated,

Plaintiffs,

against

ABE LAVINE, individually, and in his capacity as Commissioner of the New York State Department of Social Services, and JAMES M. SHUART, individually, and in his capacity as Commissioner of the Nassau County Department of Social Services,

Defendants.

STATE OF NEW YORK }
COUNTY OF NASSAU } ss.:

MARVIN RACHLIN, being duly sworn, deposes and says:

That he is an attorney duly licensed to practice law in the state of New York, and is Executive Assistant to the Defendant Commissioner of the Nassau County Department of Social Services, and has held that position since 1966.

That your deponent's function is that of House Counsel and he is fully familiar with the instant litigation as well as other litigation, legislation, rules and regulations affect-

ing the administration of public assistance programs in the County of Nassau and State of New York.

The plaintiffs, challenging the validity of 18 NYCRR 352.30(d) have concluded that the subject regulation, that proportionately limits a shelter allowance to the extent that shelter is shared with non-recipients, is presumption of income in contravention of 45 CFR 233.90(a) as well as the supremacy clause of Article VI, and due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

The facts and allegations in the original complaint regarding the named plaintiffs, Annie Taylor and Charlotte Otey, do not support the conclusions drawn by plaintiffs and provide no legal basis for the relief requested.

As originally alleged in the complaint, the plaintiff, Annie Taylor, resided in an apartment with her infant daughter and her adult sister, all of whom were in receipt of public assistance from Nassau County. The plaintiff and her daughter received a shelter allowance of $110.00 per month, representing two-thirds of the County's shelter allowance for three persons, and her sister received $55.00 per month, representing one-third of the shelter allowance of $165.00 per month as part of her independent assistance grant.

The payments continued until January, 1973 when the grant to plaintiff's sister was discontinued for failure to comply with eligibility requirements. The grant to the plaintiff and her child was not reduced or altered in any manner.

The plaintiff did, however, seek an increase in her own grant. The attempt was to increase one grant to offset the discontinuance of another's grant, although no legal objection was ever raised as to the original termination. As of March 1973, plaintiff's sister did comply with the eligibility requirements, was reopened and did again receive her grant, including her $55.00 shelter allowance.

The refusal to increase the plaintiff's grant was not based upon nor had it any relevance or relationship to a presumption of income. The refusal was based upon the fact that the plaintiff could gain no greater eligibility solely by virtue of another person's ineligibility even if the other person resided in the same household. The willful failure of plaintiff's sister to pay rent to the plaintiff creates no constitutional grounds for redress against the taxpayers of the County of Nassau and State of New York. There is no question that the refusal of the sister was willful in that a shelter allowance from public assistance funds was paid to her previously, was terminated for failing to provide eligibility information available to her, and was restored when she provided the necessary information two months later.

That the plaintiff Charlotte Otey alleges and admits at paragraphs 27 and 28 of the sworn complaint, that she arranged with her adult son for his financial contribution to the household if he remained. It is further alleged that "in view of the likelihood of this change in circumstances * * *" (par. 28, verified complaint), the plaintiff Otey failed and refused to challenge the proposed reduction or even appear at the fair hearing which was scheduled at her request. The shelter allowance was reduced only after the willful default by the plaintiff Charlotte Otey.

That by virtue of the fact that the plaintiff's adult son failed or refused to perform the commitment agreed to with his mother, the plaintiff concludes that this failure must be paid for with public funds and that the uncontested refusal to do this violates federal law.

That the real issue in the Otey situation as in the Taylor case is whether or not valid eligibility requirements can be bypassed through the payment of a substitute grant to an eligibile receipient in lieu of a grant to one who is not eligible.

That the plaintiff Otey's adult son would have been eligible for assistance in his own name, provided he complied with the employment requirements of New York State Law (Sec. 131, subd. 4).

Plaintiff's son, therefore, could have obtained the funds to pay for his share of shelter from employment income or public assistance or both. His refusal and failure to do so creates no entitlement for his mother, nor any liability on the part of the public at large.

That your deponent does not believe that it was the intent of Congress to have the Federal AFDC program provide benefits for those not eligible or to become the authority for eluding valid requirements of other federal or state assistance programs, which would be the effect of granting the relief demanded by the plaintiffs Taylor and Otey and all others similarly situated.

That by virtue of the low vacancy ratio of available housing in Nassau County, the relief demanded by the plaintiffs would work primarily to the benefit of the landlords; would ultimately diminish the plaintiff's ability to obtain adequate housing; and would increase the cost to the taxpayer, all of which would be adverse to the public interest.

That there is virtually no rent control existing in the County of Nassau. The rent schedule, and, therefore, the rents paid by the Nassau County Department of Social Services, are in fact the only rent control or stabilization existent in the County. If the Department of Social Services is forced to abandon 18 NYCRR 352.30(d), then it must be expected in our housing market that tenants will be required to "double up" as a condition of tenancy, with each family or individual responsible for the full rent that was previously charged for the entire unit. The funds to the landlords will multiply, as will the cost to the taxpayer in the same proportion that the available space to any recipient tenant is diminished.

That the responses to changes in the rent structure of the Department of Social Services by the landlords are swift and effective. Prior to July 1970, in reviewing the rent schedule, the Nassau County Department of Social Services conducted a survey and determined that 17.6% of the caseload was paying rent in excess of the schedule. That immediately following the adoption of a new and higher schedule on July 1, 1970, the survey revealed 18% of the caseload paying rent in excess of the new and higher schedule. Higher rents do nothing to increase the number of dwelling units available, but rather only increase the cost of those units already in use. The effect of increasing the amount of money available from public assistance funds for rent will be to simply inflate the rents to that level, which will ultimately result in pricing the middle income wage-earner out of the market and out of the community. When only those dependent upon public funds can afford the rent in a community, that community cannot long survive.

That granting a rent allowance without regard to the composition of the household, would create an undue advantage for landlords in an already unbalanced relationship and would work against the efforts being made and accomplishments being achieved in upgrading the housing conditions for public assistance recipients in Nassau County.

That the Nassau County Department of Social Services, in cooperation with the County Housing Coordinator, the United States Department of Housing and Urban Development, the County Health Department, and the various building departments of the municipalities within the County, has inspected 5,873 dwelling units since February 29, 1973, to determine the existence of violations which would make the units substandard pursuant to Sec. 143-b of the Social Services Law of the State of New York. The

program has resulted in repairs and improvements of many units. Of the 5,873 units inspected, only 59 have been determined to be substandard, and 385 corrections and improvements were made, with 351 additional corrections pending.

That the inspection program has forced repair and maintenance of public assistance supported housing in the County of Nassau. To adopt a posture that would permit or require the sharing and "doubling up" of basic living accommodations would certainly result in eliminating the advantage that has been gained; strengthening the position of the landlord in relationship to his tenant; and increasing the cost to the taxpayer while providing no comparable benefit to any segment of our population to whom we owe a public duty.

That the due process and equal protection clauses of the Fourteenth Amendment to the Constitution do not mandate, provide for or protect any particular level of public assistance grant. 18 NYCRR 352.90(d) presumes nothing; not income, not relationships, and not standards of behaviour based upon any given standard of morality. The regulation is a rational limitation of public funds only to those and only to the extent that those eligible persons have a demonstrated need pursuant to the public assistance programs of the State of New York.

(Sworn to by Marvin Rachlin, June 24, 1974.)

Transcript of Hearing on June 26, 1974 (Excerpts).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

72 Civ. 3423

ROSE HURLEY, individually and on behalf of her minor dependent children, DOREEN HURLEY, JAMIE HURLEY and JOHN HURLEY, and on behalf of all other persons similarly situated,

Plaintiffs,

against

BARRY VAN LARE, individually, and in his capacity as Acting Commissioner of the Department of Social Services of the State of New York,

ABE LAVINE, individually, and in his capacity as Commissioner of the Department of Social Services of the State of New York,

LOUIS P. KURTIS, individually, and in his capacity as Commissioner of the Department of Social Services of the County of Westchester,

Defendants.

EASTERN DISTRICT OF NEW YORK

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73 Civ. 699

ANNIE TAYLOR, et al.

v.

ABE LAVINE, et al.

New York, New York
June 26, 1974

Before

HON. PAUL R. HAYS, Circuit Judge
HON. JACK WEINSTEIN, District Judge
HON. ARNOLD BAUMAN, District Judge

(2)[*] Appearances

LEGAL AID SOCIETY OF WESTCHESTER COUNTY,
Attorney for Plaintiffs
By: MARTIN A. SCHWARTZ, Esq.
LAWRENCE S. KAHN, Esq., of Counsel
and
NASSAU COUNTY LAW SERVICES COMMITTEE, INC.,
By: LEONARD S. CLARK, Esq., of Counsel

LOUIS J. LEFKOWITZ, Esq.
Attorney General for the State of New York
(MRS.) JUDITH GORDON, Esq., Assistant Attorney General

GERALD HARRIS, Esq.
County Attorney, Westchester County
By: F. SHERWOOD ALEXANDER, Esq., of Counsel

BROOKLYN LEGAL SERVICES,
Attorneys for Proposed Intervenor, Aloise
By: YVONNE LEWIS, Esq., of Counsel

* * * * * *

(7) PHYLLIS M. D'ALESSIO, called as a witness, being first duly sworn, testified as follow:

Direct Examination by Mr. Schwartz:

Q. Mrs. D'Alessio, where do you reside? A. Forty Southwest Street, Mt. Vernon, New York.

Q. How long have you resided at that address? A. Almost three years.

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[*] Numbers in parentheses refer to pages of original transcript.

Q. How old are you, Mrs. D'Alessio? A. I will be 32.

Q. Do you presently work? A. No, I do not.

Q. When have you last worked, if you have at all? A. I don't quite remember. I believe it was 1967, 1968, something like that.

Q. And could you describe the type of work that you did? A. I was working in a nursing home.

Q. And what type of work did you do? A. Dietician's aide.

(8) Q. Who do you reside with? A. Harry Mattola, Christine and Kathy D'Alessio.

Judge Bauman: I wonder if you could speak up just a little bit louder, please.

Q. Are Kathy D'Alessio and Christine D'Alessio your daughters? A. Yes.

Q. Is Mr. Mattola a relative of yours? A. No.

Q. Is he the father of either of your children? A. No.

Q. Has he adopted either of your children? A. No.

Q. How long has Mr. Mattola resided with you? A. It's been off and on for the past seven or eight years.

Q. Does he presently reside with you? A. Yes.

Q. Does he reside with you permanently? A. Yes, he does.

Q. Are you married, Mrs. D'Alessio? A. I am separated with a divorce in proceeding.

Q. When was the last time you had seen your husband? A. Ten years ago.

(9) Q. Have you made any previous efforts to get a divorce? A. Yes, I have.

Q. When was that? A. That was November 5, 1966.

Q. And what efforts did you make, Mrs. D'Alessio? A. I applied for divorce in Legal Aid in Mt. Vernon, got transferred to White Plains, and when it reached for publication, a fee, I couldn't pay for it, and it was dropped.

Q. And what type of divorce proceeding is in progress now? A. My husband is filing suit.

Q. Has the suit been filed? A. As far as I know, it has.

Q. Are you and your children receiving public assistance? A. Yes, we are.

Q. And do you know what category you are receiving such assistance? A. Aid to dependent children.

Q. What is the total amount of your public assistance grant? A. $354.00.

Q. Does this include shelter? A. Yes.

(10) Q. How long have you been receiving public assistance? A. For about eight or nine years. About 9 years.

Q. How would you describe the present state of your health? A. Not good.

Q. Could you elaborate on that? A. Well, I have had several operations in the past seven years, two spinal operations. I had a cancer operation two years ago that was necessary for a hysterectomy. I have had about eight operations on my feet for fibrous tumors, and I have been hospitalized periodically for traction.

Q. Who took care of the children while you were in the hospital? A. Mr. Mattola.

Q. How about while you were recovering? A. Mr. Mattola.

Q. Who performed the household chores during these periods? Mr. Mattola.

Q. Could you describe the relationship between Mr. Mattola and your children? A. As far as the children are concerned, that is their father. He has been like a father to the children. He has raised them.

(11) Q. And do the children view him as the father? A. Indeed, yes.

Q. Could you describe the functions that Mr. Mattola performed while you were in the hospital and while you were recovering? A. He cooked for them, he shopped for

them, they were pre-school, he bathed them, cleaned the house, and took them out, kept their time occupied.

Q. How old is Mr. Mattola? A. Mr. Mattola will be 50.

Q. Does he work? A. He hasn't worked as of lately.

Q. When would be the last time that he has worked? A. About a year or two ago.

Q. What type of work does Mr. Mattola do? A. Caddy master to caddy.

Q. When he works, does he work continuously? A. Off and on. He does odd jobs in the winter time, and in the season he is an the golf course.

Q. Is Mr. Mattola himself a recipient of public assistance? A. No, he is not.

Q. Has he ever applied for public assistance? A. No, he never has.

(12) Q. How does he support himself? A. By doing these odd jobs and the golf course.

Q. Has he ever received unemployment compensation? A. Yes, he has.

Q. Does he receive it now? A. No, he does not.

Q. Does Mr. Mattola provide any support to either your children or yourself? A. No, he does not.

Q. Does he pay any part of the rent? A. No, he does not.

Q. How big is your present apartment? A. Five small rooms.

Q. Could you describe those rooms for the Court. A. My bedroom, the one bedroom is about 12x15, my living room is about 10x13, the children's room is about a 10x8, L-shaped. The other room that should be a bedroom is about six by seven which I keep my refrigerator in. And my kitchen is about a 10x12, 10x13.

Q. Do you have a dining room? A. No.

Q. In which room do you reside? A. In the 12x15.

Q. That's the bigger bedroom? (13) A. Yes.

Q. And in which room does Mr. Mattola reside? A. The same room.

Q. And where do your two daughters reside? A. In the L-shaped room, the 10x8.

Q. Do your daughters have separate beds? A. Yes, they do. They are on top of one another, they are double-deckers, bunk beds.

Q. Why are they on top of each other? A. The room isn't big enough to put them side by side.

Q. In which room do you eat? A. In the kitchen.

Q. Now, would you say that the fact that Mr. Mattola resides with you means that you have more space than you need for you and your two children? A. No.

Q. How much is your present rent? A. One hundred—

Judge Bauman: Excuse me for interrupting. Not out of any morbid curiosity, but I would like to know what is the bed arrangements in your bedroom; is it one large bed?

The Witness: Yes, it is a double bed.

Q. Would you give us the present rent? A. $175.00.

(14) Q. And how long have you been paying this rent? A. Since September '71.

Q. Does the Welfare Department give you a full allowance for this rent? A. Yes, with the three of us, our rent is included in our grant. We all have a share in the rent.

Q. Could you explain that? A. In other words, the children get so much a month each, I get so much, and in that amount comes the rent.

Judge Hays: Is it specified? The amount allocated to rent, is it specified?

The Witness: No, it isn't, but this is how it was explained to me through the Department of Social Services.

Judge Hays: You are supposed to pay your rent out of the general allowance you get?

The Witness: Yes.

Mr. Schwartz: Your Honor, this is a point of law, and in fact the regulations and the state statutes separate rent as a separate item of need, and rent in fact is computed separately.

Judge Hays: Has it been changed?

Mr. Schwartz: It has not as yet been changed. There are some contemplated changes, but the bill has not taken place.

(15) Mrs. Gordon: Excuse me, I must except to counsel's remarks, if Mrs. D'Alessio is implying either at the present time shelter allowances are not computed separately from the basic subsistence grant or if she is implying there is going to be any change in that in the future.

Judge Hays: You say they are computed separately from the basic assistance grant?

Mrs. Gordon: That is absolutely correct, your Honor. The two basic essentials of public assistance benefits are a subsistence or pre-added or basic grant, that is, a grant for food, clothing and incidentals, and a separately computed shelter allowance. We are concerned here with the shelter allowance.

Judge Hays: And is the client told which is which; what the allowances are?

Mrs. Gordon: Yes, quite so. In fact, I think if your Honor looks at the appendix at pages 47, 48, paragraphs 13 and 14, you will find an affidavit previously submitted by Mrs. D'Alessio wherein she states that she was going to get three-fourths of her shelter allowance, or three-fourths of $175. That was submitted—sworn to February 6, 1973.

Q. Mrs. D'Alessio, does the Welfare Department now pay the full $175 rent? (16) A. Yes, they do.

Q. Did there come a time in January of 1973 that you received a letter from the Westchester County Department of Social Services indicating that they intended to reduce your shelter allowance? A. Yes.

Q. And did this letter indicate why this reduction was to take place? A. Yes, it did.

Q. Could you tell us that reason? A. The reason was supposed to be for Mr. Mattola residing there.

Q. Is this document, which is marked Exhibit J, which has been furnished to defendant's counsel, a copy of a letter which you received from the Westchester County Department of Social Services indicating that the Welfare Department intended to reduce your grant? A. That's right.

Mrs. Schwartz: Your Honors, we would move that this copy of the letter be admitted as Plaintiffs' Exhibit J.

Judge Bauman: Show it to your adversary.

Mr. Schwartz: We have served a copy on our adversary, your Honor.

Mrs. Gordon: Your Honors, I don't except to this. (17) I would just like to ask counsel: Isn't this document previously in a record of this case by affidavit or otherwise?

Mr. Schwartz: It is in the record, your Honor.

Mrs. Gordon: It is my feeling, your Honors, that it would be perhaps best not to repeat matters already appearing in the record, particularly since we have copies of it in the record.

Judge Hays: I see no objection. It may be convenient to have it now.

(Plaintiffs' Exhibit J received in evidence.)

Q. Mrs. D'Alessio, did you receive a subsequent letter dated January 30, 1973, from the Westchester County Department of Social Services which also indicated that the Department of Social Services intended to reduce your shelter allowance? A. Yes, I did.

Q. Is this document which is marked Plaintiff's Exhibit K, which has been furnished to defendant's counsel, a true copy of that letter? A. Yes, this is it.

Mr. Schwartz: Mrs. Gordon?

Mrs. Gordon: No objection.

(Plaintiffs' Exhibit K was received in evidence.)

Q. Mrs. D'Alessio, did the Department of Social (18) Services in fact reduce your shelter allowance? A. Yes, they did.

Q. And are you now receiving a reduced amount of shelter allowance? A. No, I am not.

Q. Could you explain to the Court why you are now not receiving a reduced amount? A. Because I came to Legal Aid.

Mr. Schwartz: Your Honors, the record will indicate the state has agreed to keep Mrs. D'Alessio on full assistance pending the outcome of this litigation.

Judge Weinstein: Was it reduced for any period?

Mr. Schwartz: If it was, the retroactive amount was corrected.

Judge Weinstein: So she has not suffered any loss as a result of this activity.

Mr. Schwartz: That is right.

Q. Mrs. D'Alessio, what would happen to your children and yourself if the Westchester County Department of

Social Services in fact reduced your shelter allowance? A. We would eat less.

Q. What would be the effect on your family? A. It would be pretty hard.

Q. What do you mean by "pretty hard"? (19) A. It's hard to survive now. It would be that much harder with the lack of $43 and change. That would not enable me to get my food stamps.

Q. Are you able to meet the needs of your children and yourself now? A. No, I am not.

Q. Which needs are you not able to meet? A. Clothing.

Q. Can you explain to the Court what you mean by not being able to meet your clothing needs? A. I don't have enough money after I pay my Con Edison, purchase my food stamps, they don't go a long way, I have to add to it, I have to buy my household cleaning things outside of my food stamps, I have laundry needs that I have to meet weekly.

Mrs. Gordon: Excuse me, your Honors, I'd like to interpose a general objection to this line of questioning. We do not understand plaintiffs or the intervenors to have ever contested the adequacy of the basic grant or the subsistence grant, that grant for food, clothing and incidentals.

Mr. Schwartz: Your Honor, we don't contest the basic grant, but we are trying to demonstrate to the Court how welfare recipients live and what the effect of a (20) contemplated reduction would be on their lives.

Judge Hays: You may continue.

Mr. Schwartz: Thank you, your Honor.

Q. How would you meet your rental obligation if the Department reduced your rent? A. I would have to take it out of my food money.

Q. Does Mr. Mattola pay any part of this rental at all? A. No.

Q. Has your rental been increased because of Mr. Mattola's residence in the home? A. No.

Q. Now, Mrs. D'Alessio, have you ever had any contact with a Mr. Mike Morelli? A. Yes.

Q. And where did this contact take place? A. This contact took place at 324 East 4th Street where I once resided in Mt. Vernon.

Q. Would you tell the Court who Mr. Mike Morelli is? A. He is a case worker for the Mt. Vernon, Westchester Social Services Department.

Q. Did you ever have any conversation with Mr. Morelli regarding Mr. Mattola? A. Yes, I did.

(21) Q. Would you give the Court the substance of that conversation? A. The substance was I was recuperating from a back operation and Mr. Morelli made a house call and he was told of the presence of Mr. Mattola there because I was supposed to have a housekeeper, someone to take care of my children, and Mr. Mattola was doing this, and Mr. Morelli said that that was quite fine, in fact, "Why doesn't he just move in with you, lock, stock and barrel?" And we said that we didn't do things that way. He was helping me, until I was able to take care of myself, my home and my children.

Q. Did Mr. Morelli say anything about a housekeeper in that? A. He said that the Department was indeed saving a lot of money if they had to provide these people for me.

Q. What do you mean by "these people"? A. Someone to take care of me, a housekeeper for the home, and the children.

Q. Could you describe to the Court the present furniture that you have? A. You can look at it. You can't sit on it. It was that way when it was purchased. I was told where to buy my living room set, and it has stayed that way since I

purchased it eight years ago. The chairs can not be sat on. (22) They are worn away. They are covered with very inexpensive covering, and it fills my room.

Judge Weinstein: What do you mean you were told where to buy it? Who told you where to buy it?

The Witness: Social Services Department sent me down to Cane's Warehouse to look at furniture to purchase for my apartment.

Judge Weinstein: Will counsel for the government

The Witness: This was new furniture.

Judge Winstein: Will counsel for the government look into this? It sounds to me like there may be a criminal accusation here. Check on it.

Mrs. Gordon: Yes, sir.

Judge Weinstein: All right, continue.

A. (Continuing) I went down to Cane's warehouse with Mr. Mattola. I had no money. We went down and looked at the furnitrue and it was a package deal of three rooms of furniture.

Now, for them to hold this furniture, I had to put down a deposit of $15.00. The next morning, the Department of Social Services called me and informed me that in fact I could not buy furniture from Cane's Warehouse as that would not hold up, and they would not replace the furniture should it wear out. So, we lost the deposit on that money.

(23) Instead, they sent me to Atlas Furniture on Fourth Avenue in Mt. Vernon. I purchased a three-piece living room set for $119 that was very, very bad. It was new furniture, but there was nothing to it. But I was made to buy this. I was sent to Korn Suite on Fourth Avenue to buy two beds for my children, and I shared a bed—I had a bed, my daughter had one, and my youngest was still in a crib. The beds fell apart. The beds were made out of bal-

salm wood like what you would use in making model airplanes.

When I called the Department of Social Services and told them the condition of the furniture, they said they were very sorry that they could not replace this.

And that is the furniture that I still have half of that furniture.

I have been given as of lately two bunk beds, a set of bunk beds for my children, last December, and that's the first set of beds that they have had in eight years.

Mr. Schwartz: I have no further questions, your Honors.

By Judge Hays:

Q. What do the children do, sleep on the floor? A. No, my children had to sleep on the couch with me.

Q. Your two children, with you, on the couch? A. That's right, on a pull-out couch.

(24) Cross Examination by Mrs. Gordon:

Q. Mrs. D'Alessio, just to pick up on that last statement, because I am a little unclear, when you started your testimony, I believe Judge Bauman asked you where you slept, and you said you slept in the larger bedroom, is that right? A. This is now where I am residing, yes.

Q. Where you are residing now. You sleep in the master bedroom? A. Yes.

Q. In a double bed? A. Yes.

Q. And Mr. Mattola shares that bed with you? A. Yes.

Q. And the two girls—right, you have two girls? A. Yes.

Q. The two girls sleep in the second bedroom, is that right? A. They sleep in bunk beds.

Q. In the second bedroom in bunk beds. I was just about to say that. A. Yes.

Q. When was this situation with the children sleeping (25) on the sofa with you? A. This was at Fourth Street.

Q. Is that where you live now? A. No, that is not.

Q. How long ago was that? A. That was about six years ago.

Q. I see. That living at Fourth Street and sleeping with you and the girls sleeping on the sofa has nothing to do with the point in time where the Welfare Department told you that your shelter allowance was going to be prorated, right? A. Oh, no.

Q. Now, the cost of your rent is $175, is that right? A. Yes.

Q. And you receive a shelter allowance equal to $175 is that right? A. $179.00.

Q. $179.00, okay.

Now, when you were describing your apartment before, you indicated that there was a living room approximately 12 x 14, right? A. That was my bedroom.

Q. That's your bedroom? How big is the living room? A. The living room is about 10 x 13.

(26) Q. 10 x 13? A. Yes.

Q. I don't mean to go into tedious detail on that, Mrs. D'Alessio, but here is the affidavit that counsel served on me last night and I refer you to Paragraph 4. I just want to get the record clear.

It says here the living room is 12 x 14. A. Well, I get a little confused. Yes, that's about right. Okay.

Q. And the bigger bedroom is about 12 x 15. A. That's right.

Q. And the girl's room with the bunk bed is about 8 x 10? A. Yes.

Q. Now, there is a fifth room in the apartment aside from the kitchen, right? There is this small room, approximately 6 x 6 or 5 x 6, right? A. Yes.

Q. Which you said before when y(were on the stand was a bedroom? A. Was supposed to be.

Q. But you don't use it as a bedroom? A. No.

Q. Now, you recited a conversation you had with Mr. (27) Morelli, who is apparently a case worker at a point in time, right? A. Yes.

Q. And Mr. Morelli suggested to you that Mr. Mattola move into your apartment completely at that time? A. Yes.

Q. Mr. Mattola was assisting you when you were ill. Did Mr. Morelli suggest to you that Mr. Mattola mve into your apartment and not pay you any share of the rent? A. He mentioned nothing about paying anything. He just said, "Why doesn't he just move in? What's the difference?"

Q. You had an additional conversation with Mr. Morelli to the effect that you were saving the Westchester County Department of Social Services some money because you didn't have a housekeeper at that point in time, right? A. That's right.

Q. Now, the reason that you might have had a housekeeper was because you were ill at that time, right? A. I was totally disabled.

Q. Did Mr. Morelli lead you to believe in any respect that had Mr. Mattola not been there or had you needed the assistance of a housekeeper you would not have obtained one from the Department? (28) A. No, he did not.

Q. Now, you have said that Mr. Mattola doesn't pay you any share of the rent, right? A. Right.

Q. At least we are talking now from January, February, March, 1973 forward, that's the only period of time with which we are concerned.

Now, he has worked from time to time at odd jobs? A. Right.

Q. Has he received unemployment insurance? A. Yes, he has.

Q. Now, as a result of your participation in this action, your shelter allowance was continued at the actual cost of

your rent, notwithstanding Mr. Mattola's presence in your house, right? A. That's right.

Q. Now, you indicated that if the shelter allowance had in fact been reduced—by the way, do you know how much it was to be reduced by? A. $43 and change. I am not exactly sure on the change.

Q. If it had in fact been reduced, would you have to make up the rent from your basic grant? A. Yes.

Q. From the other money you were getting from the (29) Department? A. That's right.

Q. And therefore you would eat less and so on? A. That's right.

Q. If in fact the shelter allowance was reduced by reason of Mr. Mattola's presence, why wouldn't you ask Mr. Mattola to pay his share of the rent? A. I don't understand the question.

Q. If the Department in fact reduced your $175 by a fourth, attributable to Mr. Mattola's presence in your household, right; so you were getting a fourth less than you were getting before; why wouldn't you ask Mr. Mattola to pay you that quarter? A. Because it was not only his fair share of the rent at the time. They went on to go further. They wanted his fair share in food, they wanted his fair share in Con Edison, in other words, they wanted his fair share in the entire household budget.

Q. I show you Plaintiffs' Exhibit J, which you looked at before and indicated was a true copy of the letter you received on 1/22/73. Would you look at it again and is this the document you saw before? A. I am familiar with the document. It states about his fair share of the rent. But verbally, I was told that (30) if he in fact were to reside there, he would be expected to pay his fair share on the rent, but everything else in the household. That's not in writing, but that's what was told to me verbally.

Q. Mrs. D'Alessio, would you please just read this 2 sentences right here, which is 1, 2, 3, about four lines down

from the top. A. "Quality control reports of 10/15/72 indicates that Mr. Mattola resides with you and your family. Therefore, we are prorating your rent three quarters of $175, which comes to $131.40."

Q. Thank you.

Now, Mrs. D'Alessio, you so far submitted in this entire case two affidavits, right, one early on when you applied to intervene, one signed, I guess, yesterday or the day before, which I got last night, and a complaint, is that right? A. That's right.

Q. Which you signed? A. Yes, ma'am.

Q. Have you ever previously alleged any claim in any of those papers that the Department of Social Services told you that they were going to reduce your entire grant, not just your shelter allowance, not what you just read, but (31) your entire grant because of Mr. Mattola's presence in the household?

Have you ever made that claim? A. I don't understand the question. I'd like to hear it again.

Mrs. Gordon: Read it back.

Mr. Schwartz: The pleadings and the affidavit speak for themselves. I can say the claim has not been made. Mrs. D'Alessio has testified that there was a contradiction between what was told to her verbally and what was indicated in the writing that was shown to her.

Judge Hays: There is nothing in the records that indicates that she has previously made any such claim?

Mrs. Gordon: That's correct.

Judge Hays: This is conceded.

Mrs. Gordon: Fine.

Q. Then let's just return to the first question that I asked you in this series.

When the Department advised you in Plaintiffs' Exhibit J that they were going to pro rate your shelter allowance by reason of Mr. Mattola's presence in your household, and that they were going to reduce a fourth, why didn't you ask Mr. Mattola to give you a fourth? A. For the simple reason, Mr. Mattola was not (32) residing with me at the time. This was an assumption on the Department's part, because he had been there when I was in the hospital and stayed there until I was able to get around.

Q. Mrs. D'Alessio, is it your claim in this action that Mr. Mattola does not reside with you? A. It is my claim that Mr. Mattola resided with me only when I was in the hospital and convalescing.

Judge Hays: Did he reside with you in January 1973?

The Witness: Yes, he did, sir.

Judge Hays: This was while you were convalescing from your operation?

The Witness: That's right, and this is when this matter came and I took it to Legal Aid and this went to Court, and then when I got papers stating that I had won my case, then he did in fact move in. But he never lived with me permanently.

Judge Hays: Until?

The Witness: Until after the outcome of the case in court.

Q. Mrs. D'Alessio, I read to you from your affidavit first submitted in this case, dated February 6, 1973:

"During all the time that I resided in Mt. Vernon, my male friend resided with me fore more than two (33) months each year. We have resided together for various times in the last six years. During the months of December, 1972, and January, 1973, Mr. Mattola resided with me

continuously. Mr. Mattola presently resides with my children and myself and we intend to reside together in the future. Mr. Mattola and I intend and desire to be married."

And hen you go on "and I have not been able to marry him because I am married to somebody else."

All right, now, I am not your counsel, Mrs. D'Alessio, but I just want to make it clear to you, if it is your claim that Mr. Mattola does not reside with you—

> Judge Hays: That isn't her claim.
>
> Mrs. Gordon: When I first questioned her before I read her this affidavit she said he didn't reside with her.

Q. I want to make sure what your claim is, Mrs. D'Alessio, so I can argue whether or not you are properly a part of this case. A. At the time that you were referring to, he was not residing with me permanently.

Q. When you got Plaintiffs' Exhibit J in the mail? A. He was not residing with me.

Q. He was not? A. No, ma'am.

Q. Therefore, the only conclusion we could draw from (34) that, Mrs. D'Alessio, would be that the Administrator was in error when he told you that he was going to reduce your allowance because Mr. Mattola was residing with you?

> Mr. Schwartz: Your Honor, I object. These Administrators are the agents of the defendant. The defendants are bound by the determinations that they make.
>
> Mrs. Gordon: Quite frankly, your Honors, I did not plan to take all this time on this point. I simply want to know if this woman had a non-contributing lodger in her household at the time

of the events giving rise to this action. That's all I want to know.

Judge Weinstein: The present situation, I take it, the man is living with her. It is conceded.

Q. Is that conceded? A. Yes, ma'am.

Mrs. Gordon: Okay.

Judge Weinstein: And if he continues to live there the state intends to cut the rental allowance. Why don't you get to that point? Why aren't you paying now?

Judge Hays: Are you finished your questions?

Mrs. Gordon: No, your Honor, I have a few more.

Q. As Judge Weinstein suggested, let's take it from this point in time. If the Department reduced your shelter now by reason of Mr. Mattola's being there, why wouldn't you (35) ask him to give you a quarter of the rent?

Mr. Schwartz: Your Honor, she has been asked that question three times.

Mrs. Gordon: She has never answered it, your Honor.

A. This man has just come out of the Veterans Hospital after three weeks of hospitalization, and he is not fit for work right now due to extreme high blood pressure, hypertension. And his only way of work is a golf course, and he is not going to go out on the golf course and have a stroke, so that he can pay $43 a month rent.

Judge Bauman: Let me put this to you, ma'am. It seems to me that you are developing pretty much what appears in plaintiffs' brief, namely, as the

situation now exists and as to what type of hearing there is, she wouldn't be permitted to go into any of this. The kind of hearing that is at least referred to in plaintiffs' briefs, if there were a real hearing, rather than a conclusive presumption, this is precisely the kind of thing that a hearing examiner might go into, but I think what you are doing is to in effect, at least so far as I am concerned, establish the fact that what this system creates is a conclusive presumption of contribution from the fact of residency.

Mrs. Gordon: Your Honor, just to respond to that (36) for a moment. I think one has to keep in mind vis-a-vis a welfare department, there are generically two types of people in the world, those who apply for public assistance and get it, and those who do not apply for public assistance and do not get it.

Now, in all the plaintiffs' papers, they have claimed essentially two categories of lodgers, okay, of which Mrs. D'Alessio represents one, I assume, that one being the man can't afford to give me any money, which I think is essentially what she just said.

Now, there are other categories represented by Mrs. Hurley, and by Mrs. Aloise, who have on the conceded facts lodgers who are working but who refuse to pay a portion of the rent. All right?

Now, my next question to Mrs. D'Alessio is:

Q. If it is your belief that Mr. Mattola could not afford to pay a share of the rent either because he is ill or for whatever other reason, why didn't you suggest to him that he apply for public assistance? A. He wants nothing to do with public assistance.

Q. Is he aware of the public assistance program? A. Fully aware.

Q. Yes, because you get public assistance? A. That's right.

(37) Q. Now, I just have one last question.

Judge Weinstein: Excuse me, if I understand the position, just so I can try to get it clear, it wouldn't make any difference whether he was ill or not ill, or had money, as far as the state regulations were concerned; they would be forced to cut the rental allowance?

Mrs. Gordon: The rental allowance is automatically prorated upon a factual finding that there is a non-recipient in the household who is not in fact contributing any ascertainable amount to that household, or more properly, an amount that is ascertainable over $15 is actually how it works.

Judge Weinstein: If he were on welfare—?

Mrs. Gordon: If he were on welfare, your Honor, he would get a basic grant and a shelter allowance. Okay? He would fully make up his quarter share, and if he had no money—he would pick up his quarter share of rent and he would get a basic grant, and that would avoid his eating out of Mrs. D'Allessio's and her children's basic grant, because she gets a basic grant for three, not for four.

Judge Weinstein: Let's forget about the basic grant because we don't have that case before us; we are just talking about the rent.

Mrs. Gordon: It has an effect. If Mr. Mattola is (38) really poor and he doesn't work and he doesn't make any money, he has to eat.

Judge Weinstein: As far as the state is concerned, there are only two types of people who are entitled to live in a place like this, those that are on relief and those who have money to pay their fair share.

Mrs. Gordon: As a practical matter, I think that is substantially accurate, your Honor. As a technical matter, it is not quite; it is something like Wyman vs. James. Mrs. D'Alessio has a choice. She may let Mr. Mattola live there and she may not recover the quarter from him, the quarter of the rent. She may take it out of her basic grant to some extent as she apparently is doing. She may pay the proceeds of her basic grant toward the rent.

Judge Weinstein: If she does that she violates the fiduciary duty to the children.

Mrs. Gordon: One would think so. However, in any given situation there is a margin, okay? She may have a little extra money in her grant. She may not. Now, Judge Bauman in his original opinion alluded to this situation. He said the result that would be caused in this situation is very disadvantageous to the children, because it might be that Mrs. D'Alessio would be using all of the proceeds of that basic grant in effect to support Mr. Mattola, and the better (39) social result may be to let Mr. Mattola live there rent free.

Now, what happens if Mrs. D'Alessio actually does that? In other words, if she truly disadvantages the children. What happens is she can have all of those things happen to her that Judge Oakes recited in his Second Circuit opinion: She can be counseled, she can get other types of social work help, and ultimately, her children can be removed from the premises if she is in fact devoting the major proceeds of that grant to Mr. Mattola, and, indeed, under Section 145 of the Social Services Law, she can be arrested, a practice which very often happens in California. It is a practice which is used in California.

We don't do those things to her. Down to the bottom line, as in Wyman v. James, we let it be her choice. If on a home visit we find it seriously affecting her children, we have a panoply of remedies to invoke against her, but we do not use those harsh remedies in the normal context.

Judge Weinstein: I'd like to separate, if I can, although I understand they are related, the rental problem from the basic allowance problem.

Is there any evidence that basic allowance is being used to support this man, Mr. Mattola?

Mrs. Gordon: Just her claim that if her shelter allowance was in fact reduced—

(40) Judge Weinstein: No indication that she is taking the children's food money and using it to feed the man?

Mrs. Gordon: There is no evidence of that in our record. However, on her testimony—

Judge Weinstein: Let's put that out of the case and just direct ourselves strictly to the rental problem, although I understand the relationship.

Judge Bauman: You understood when you referred to my opinion, the part of my opinion you referred to was in effect, in substance, even if a man were paying for his own food, the fact that the housing allowance would be cut would require the recipient to divert from the children's food allowance a sufficient amount to make up the difference which is deducted by the authorities.

You did understand that was the implication?

Mrs. Gordon: I did understand that, your Honor.

I would have to call your attention if he is in fact buying his own food, under the regulation, he would be a contributing lodger. All right? Not a non-contributing lodger, but a contributing lodger. And

the amount that he contributes would be put on one side of the family budget, the public assistance unit's budget, the public assistance unit's needs would be budgeted on the other side of the piece of paper, and the amount that he contributed offset against (41) the total grant over a certain amount of money which is recited in the regulation.

Judge Bauman: I think we ought to get through with the witness. I apologize to you.

Judge Weinstein: I think we ought to get some of these cleared up.

Mrs. Gordon: I think it will become clear in the papers. I don't think we need testimony.

Q. Mrs. D'Alessio, I am sorry to keep you. I have one set of questions with respect to the furniture and the Cane's Warehouse situation you testified to.

Is Cane's Warehouse in New York City or in Westchester County? A. New York City.

Q. Up on Third Avenue near 80th Street? A. Something like that.

Q. Now, is it your testimony that somebody from the Department of Social Services told you that when you went to spend your furniture grant you had to go and spend it at Cane's? A. No, I was told to go to Cane's because of the package deals and when I got down there, the next day, I got a phone call stating that in fact I should not purchase furniture from Cane's as they had a worker down there, the same day that I was there, and looked over the package deal (42) and they were not substantial enough.

Q. In other words, there wasn't a big savings and it wasn't worth it to go there? A. It wasn't a—it was a big sale, or big savings. The furniture wasn't fit.

Q. Who told you this, somebody from Social Services or a friend? A. Social Services.

Q. So, fine, one day you were told that Cane might be

a good place to go and the next day you were called and told Cane's wasn't a good place to go because you wouldn't save a lot of money by going there? A. Yes. It wasn't the point of the money; it was the quality of the furniture.

Q. I am sorry, I beg your pardon. A. So, instead, they sent me someplace just as bad only closer to where I live.

Q. Okay, so did they recommend this other furniture place? A. They gave me no ultimatum; they told me to go there.

Q. After the Department withdrew its recommendation that you should go to Cane's Warehouse, did it tell you that you had to go to Atlas? A. That's right.

(43) Q. And that you could buy furniture at no other place? A. That's right.

Q. Who told you that? A. I don't remember the worker's name. I have had about a dozen or more. I really have no idea.

Q. I am asking these questions pursuant to the Judge's request because I'd like to find out, be able to locate the person involved if there is such a person.

Approximately what point in time was this? A. August, the middle of August, or the beginning of August of 1966.

Q. And a person in the Mt. Vernon Center? A. Yes.

Judge Weinstein: Was he a man assigned to your case?

The Witness: It was a woman at the time. I had a case worker at the time.

Judge Weinstein: It was a female case worker?

The Witness: Yes.

Q. It was the same case worker you normally had at that time? A. Yes.

Q. Now, you indicated that the quality of the furniture (44) that you got from Atlas was not good, is that right? A. It was terrible.

Q. Is that the same furniture you still have in the house? A. I have the two chairs. They have since, about five years ago, possibly six, purchased for me a Castro convertible couch that pulled out into a double bed, which is worn, there is no more padding, there's springs coming up through the seatings and whatnot.

Q. I am sorry, I am not trying to make this complex. Do you still have the furniture from Atlas in your apartment, or did you substitute it? A. Yes, I have. I have two pieces of it left.

Q. How much did you buy in the first place? A. The three pieces were $119.00.

Q. And of the three you have two left? A. Yes.

Q. From and after the time you noticed this Atlas furniture was no good or deteriorating, did you apply to the Department for additional furniture grant? A. I went to the Department and told them of the furniture that I had. They sent a man from Atlas to fix the chair that was definitely broken, and it was just a temporary thing. They never offered me a new furniture grant. No, in (45) fact it took me three years to get the beds that I now have for my children and I was told that was my last furniture grant.

Q. Somebody told you that the beds you recently got was your last furniture grant? A. In other words, that was all I was allowed. The amount of money that those beds cost that was all that I was allowed.

Q. Who told you that? A. I don't remember her name.

Q. Is it your present case worker? A. No, it is not.

Q. When did this happen? A. This happened, I believe it was last December or the December before. It was just shortly before Christmas, either one or two years ago.

Q. One last question.

From the time you purchased the furniture at Atlas, until the present day, you have added furniture to your apartment, is that correct? A. Yes, I have.

Q. Where did you get the money for the furniture? A. Mr. Mattola bought my bedroom set.

Q. When did he do that? (46) A. He did that in 1970.

Q. And that's the only addition you have made? A. As far as furniture goes, yes; that he has purchased, yes.

Q. I am only asking you really—so far as adding to the apartment since the time of Atlas, you mentioned two bunk beds before, they came from the Department of Social Services, right? A. That's right.

Q. And in the bedroom, the master bedroom, Mr. Mattola bought the bedroom set? A. That's right.

Q. Were there any other additions? A. He bought a china cabinet for me to put my dishes in.

Q. When did he do that? A. The same year.

Q. 1970? A. That's right.

Q. Any other additions?

Judge Bauman: The Castro convertible.

Q. And the Castro convertible, right; he bought the Castro convertible? A. No, he did not.

(47) Judge Weinstein: This is peripheral.

Q. Is that it, the Castro convertible? A. That's the—

Q. Did you get the money for the Castro from the Department? A. I received some money, that was sent right from the Department.

Mrs. Gordon: That's all. Thank you, Mrs. D'Alessio.

Mr. Schwartz: No further questions, your Honor.

Mr. Alexander: May I ask one question. I represent the County of Westchester, and I am concerned about this directive to go to a certain place as I know the Bench may be. I just want to try to pinpoint more definitely with one or two questions.

Cross Examination by Mr. Alexander:

Q. Was this a telephone conversation you had with somebody in August of 1966? A. It was in the office.

Q. In the office of the— A. That's right.

Q. —of the Department of Social Services? A. That is correct.

Q. Which office? (48) A. The Mt. Vernon office in the Con Edison Building.

Q. And it was in August of 1966? A. That's right.

Q. Where were you living at that particular time. A. At that particular time I was living with my mother at 142 East Third Street in Mt. Vernon.

Q. 142 East Third Street. And what is your mother's name? A. My mother's name now or then?

Q. Then. A. Mrs. Claire Hearst.

Mr. Schwartz: No further questions, your Honor.

Judge Hays: You may step down.

(The witness was excused.)

(49) Mr. Schwartz: Your Honors, the plaintiffs call Dr. Herbert Gans.

Judge Bauman: I hope you will all indulge me in my eccentricity. I permit no writing or movement during the administration of the oath.

Herbert J. Gans, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Schwartz:

Q. Dr. Gans, where do you reside? A. I reside at 460 Riverside Drive in New York City.

Q. How long have you resided in New York City? A.

Since 1961, with the exception of 2 years when I was in Massachusetts.

Q. Would you tell the Court what your professional qualifications are?

Judge Weinstein: Don't you have some kind of resumé so we don't have to go through all this, not that I am not delighted to hear you, Doctor.

Mr. Schwartz: We do, your Honor, but, unfortunately we don't have copies for opposing counsel.

Judge Weinstein: Didn't I instruct counsel that if you are going to call any expert witnesses you are to change their proposed reports and qualifications?

(50) Mr. Schwartz: The instructions were that we exchange summaries of their testimony and, unfortunately, we were not able to meet with Dr. Gans until last night.

Judge Weinstein: Any objection to our looking at that?

Mrs. Gordon: I beg your pardon?

Mr. Scharwtz: We will make copies—

Mrs. Gordon: Do I have objection to him distributing them to the panel; is that what you asked me, your Honor?

Judge Weinstein: Yes.

Mrs. Gordon: I have no objection.

(Plaintiff's Exhibit O received in evidence.)

Q. Tell the Court what your areas of specialty are, Dr. Gans. A. I am a sociologist and planner. I teach in the sociology department of Columbia.

Q. Could you speak louder, please. A. I am a sociologist and a planner. I teach in the department of sociology at Columbia University, primarily in the areas of urban sociology and urban poverty.

Mr. Schwartz: Your Honors, based on the resumé material which we have submitted, we would ask that Dr. Gans be declared an expert witness in his fields.

(51) Mrs. Gordon: Your Honors, of course, I would like to see the resumé first, but—

Judge Weinstein: It is thick enough to make him an expert. (Laughter.)

Mrs. Gordon: Mr. Schwartz, do I understand your motion is to qualify the witness as an expert in urban planning and urban sociology?

Mr. Schwartz: Housing and sociology.

Judge Bauman: And urban poverty, I believe he said.

Mrs. Gordon: Your Honor, I am going to except to the motion in terms of the housing expertise only, frankly, because I have not had an opportunity to read through this entire resumé.

Judge Bauman: Pass it up and let me read it, please.

Judge Hays: All right, you may proceed with your questions.

Mr. Schwartz: Thank you, your Honor.

Q. Dr. Gans, are you familiar with the writings concerning the living arrangements of the various income levels? A. Yes, certainly.

Q. Have you studied this subject? A. I have done two studies personally, one of a poor (52) community in Boston, another of a suburban community near Philadelphia. In addition, I have kept up with the literature of the housing, the sociology of housing, the poverty, for the last 25 years, because that is my work.

Q. And specifically, are you familiar with the writings in the field concerning the living arrangements of welfare recipients? A. Certainly.

Q. Are you familiar with the regulations that are involved in this case? A. Yes.

Q. And are you familiar with the definition of the term "lodger" which is used in these regulations? A. Yes.

Q. And are you familiar with the living arrangements that are typified by the plaintiffs in this action? A. Yes, I have seen the affidavits.

Q. Now, as an expert witness, would you give us your opinion as to whether the living arrangements of the plaintiffs in this action are more prevalent among the poor than among the other income groups? A. From all the data we have, they certainly are, and for a variety of reasons. Poor people often live a very insecure existence, not only in terms of the amount of money (53) they have, but the uncertainties about how long they will have it, or if they are employed, for how long they will hold their jobs.

So, quite frequently you do get a pattern among poor people, if they can't work or they can't find work either temporarily or permanently, of moving in with a relative, either temporarily or permanently, because there simply isn't any money to establish or to continue to maintain one's own household. And typically, then, the people then become lodgers, help out in the family in the various ways in lieu of paying rent, helping to raise the children, taking care of the house, doing a variety of things. I think that's one major explanation.

> Judge Hays: Is it unusual for someone in this lodger category to be in fact eligible himself for welfare but who doesn't believe in the system and doesn't take it.
>
> The Witness: Yes, I think this happens. There are poor people who either feel that their poverty is temporary and don't want to go on welfare, don't want to get involved with being on welfare—welfare

itself is a full-time job quite often—you know, filling out of the forms, dealing with the regulations, dealing with the social workers and the case workers, and what have you, and so they simply say we are not going to go on welfare and hope (54) perhaps their problem is temporary. Other people are just, you know, have the pride of independence, as it is sometimes called, and say they want to make it on their own however that is going to be.

Judge Weinstein: There have been some studies of the percentage of people in New York who take welfare. What is that percentage?

The Witness: I don't know of any studies in New York. We know that in terms of the census data we know that less than half the people who are entitled to welfare are on welfare, but we haven't—the studies haven't been made that would indicate whether this is because they don't apply but apply or are rejected. People that don't apply for welfare are not very visible and I haven't seen any research that would put numbers on this kind of thing.

Mr. Schwartz: Your Honor, we have annexed a graph to the affidavit of Smith submitted with our supplemental affidavits which we have served upon our adversary, and we would like Dr. Gans to explain the operation of this graph to the Court.

Judge Weinstein: Let's see if I can find it. Do I have a copy of it?

Mr. Schwartz: Yes, you should, your Honor. The first affidavit would read "Supplemental Affidavit".

(55) Judge Weinstein: All right, proceed.

The Witness: Well, basically, this is a set of graphs which indicate the percentage of households in the entire society, and this is from the census, who have lodgers or relatives other than spouse or children living with them, and it is divided up into six

categories of family types in the way the census usually does it.

First, the family headed by a white male, second the family headed by a white female, third the family headed by a black male, fourth the family headed by a black female, and then fifth, the family headed by a Puerto Rican male, and sixth, the family headed by a Puerto Rican female.

And for each of these family types, the table, the chart, gives the median incomes for that family type and also the percentage of that family type which is below the 1970 poverty line, the poverty line I think then being around $4,000.

I won't go into the entire table but it shows two things: First of all, the lower the median income and at the same time the higher the percent of that family type who are living below the poverty line, the larger the number of people who are living in the house who are not spouse or children.

So that, for example, in all households headed (56) by white males where the median income is over $11,000, the total number of lodgers as defined by the census comes to the 2.5%. Among the families headed by white females, the total number of lodgers —and this is only one of six categories in this table— total number of lodgers is about 8%. The median income of white female headed families is $4500. If you take the income group that is lowest, the two income groups that are lowest, the families headed by black females, you have a percentage of lodgers which is 13%; among Puerto Rican females the percentage of lodgers is again about 8%, the median income is $3100.

So, basically, the chart shows that the lower the income, or rather, there is a relationship between

lowness of income and the tendency to have people other than spouse and children living in the household.

The second thing it indicates is that when a family is headed by a woman, there is a much greater tendency to have people other than children living in the household, and this holds for white women, for black women, for Puerto Rican women. And I think this is what I was going to say was the second page or reason for the greater prevalance of the doubling up phenomenon among poor people, and that is particularly among poor people where the head of the household is a woman.

(57) Now, we have known I think for about a hundred years, or really the data have only been available recently, that where there is a high degree of male unemployment in the society, you either get —you then get the development of what the census and sociologists call a female-headed family, in other words, the male being unable to a breadwinner either leaves the household in desperation, or in some cases is not at home because he can't be a breadwinner so he is pushed out of the household. And this tendency of the female-headed families is today most associated with the black community and it is true that it is higher among black women than it is among white women these days, but from the historical evidence we have this has been a steady pattern: it was true among the Irish, among the Italians, among the Jews at the end of the Nineteenth Century when there was an economic recession and the males had a hard time getting a job, the number of female-headed families increased.

Where you have a situation where you have a female-headed family and where you have several

children, you get the doubling up phenomenon in the sense that relatives, mostly relatives, sisters, in-laws, mothers, tend to live with the female head of the household, and this is really what is in, among other things, these charts.

So that again when you have that female-headed (58) family, you get almost automatically the doubling phenomenon simply to give aid to the head of the household.

Finally, there is a third reason which I think explains why often you get people who are lodgers in terms of the welfare definition who are not lodgers by the cenus definition, in other words, non-relatives who are living in the household.

One case is the case that was presented this morning where you have a man living in the household of a divorced family and again a separated family, and divorce has always been very difficult for the poor to get because (a) it costs money to get divorced, (b) it costs money to get a lawyer, until recently it was impossible for poor people to get free legal help, so that there has been a long tradition of simply physical separation but no divorce.

The other thing which has nothing to do with men or women—this is just as I said before where there is poverty and insecurity people get very dependent on each other to tide them over during crises, so that you have, and this has been found in studies all over the world among poor people that you have a very generous extension of help and hospitality to others, relatives and close friends.

And this exists not because poor people are necessarily more altruistic or more generous than other people, (59) but because this is really the only way you can survive in a crisis. If you don't have somebody who you can rely on to bail you out with a

couple of dollars to get you to the hospital, if one of your kids suddenly gets sick, to provide you a room if your landlord evicts you or if your building burns down or becomes uninhabitable, if this ability to call on somebody for help is not available, then survival for the poor is much more risky. And so what happens is you get a pattern of mutual help, or mutual obligation, people helping each other because they know if they help somebody when they have a problem, they will be helped in return.

One part of this helping phenomenon is people making room in their house for somebody who is in need of shelter temporarily or permanently, and again only in this case on the grounds that if I don't do it for him or her now, he won't do it for me when I am faced with that problem.

As I said before, this is a very typical pattern among poor people in this country, among poor people everywhere, really. In fact, it has been institutionalized in the godparent relationship that you find quite often among poor people in the sense that a friend is made a godparent and really incorporated in the family because then the obligation to him or her to provide help is strengthened and the godparent becomes a helper and the obligation to help (60) is more firmly established. And so, people exchange godparentships to bind this relationship and the security that is needed for giving help more firmly.

I am sorry, I didn't mean to lecture. This is a very important phenomenon that middle class people don't do much of and don't understand.

Q. Dr. Gans, as a result of this, would you say that the poor have a—or do the poor have a different concept of family than the other income groups? A. Yes and no.

Formerly, you know, the family structure among the poor is not really all that different than in the middle class, except when there is a female-headed family, and then what you get is something that is not very, very true in the middle class. This is really the big difference between the poor and the middle class.

When you are poor, the number of people you can trust is often very small. The poor people have lots of enemies. Therefore, the family becomes much more important because of the whole, by and large, taking everything else, leaving everything else consonant, the family members can be trusted more easily than others, so the family becomes much more important as a source of trust, as a source of help, as somebody needed to call on when there is a crisis, (61) temporarily or permanently. And when the household is female-headed, when the needs are greater, you call on more members of the family, and to put it quite simply, although most middle-class people live in the nuclear family, they have what the sociologists call, which is called the extended family, cousins, aunts, nieces, nephews, which visit them once a couple of weeks or every month, and that's the extent of the relationship.

Among poor people, this extended family is very important because in the end the family provides the help that nobody else will, and therefore, the extended family is really the bastion of security for a family.

Q. Dr. Gans, do planners have a definition of adequate space with respect to a residential dwelling that is used? A. There are a variety of definitions, and I think the standard one was set up by the American Public Health Association many years ago and it is being revised. The problem with it, it isn't very relevant, especially in New York City, because if you take the APHA definition of adequate space, most poor people are living in inadequate space. In other words, the standards that they do have are

not being met by most of the housing in the New York City area, the housing for the poor.

(62) Q. Is there one generally accepted standard? A. Not really, no.

Q. Could you give us your opinion as to whether the plaintiffs in this case who reside with lodgers are likely to have excess space in their apartment?

Mrs. Gordon: Objection to "are likely". The facts with respect to these plaintiffs are plain on the record, including their housing accommodations.

Mr. Schwartz: Your Honor, by "plaintiffs" I mean the plaintiff class generally. I am not referring to any specific class of family, but I am referring to the class of welfare recipients generally who reside with a lodger as defined in defendant's regulations.

Mrs. Gordon: The named plaintiffs and intervenors are the designated representatives of that class.

Judge Hays: Let the question be asked with respect to the plaintiffs. What we are talking about here is the kind of poor peole who are involved in this case.

Mr. Schwartz: That is right, your Honor.

Q. Do they generally have adequate space or inadequate space? A. No, I think it is very clear that generally they have inadequate space.

Judge Hays: What do you say about the space that (63) Mrs. D'Alessio described, how does that fit into the definition of the pattern the sociologists have developed?

The Witness: I would say, except for her living room, if I remember, it is barely adequate, the rest

of her apartment is a pretty crowded one. There was reference to a room 5x6, which is intended to be used as a bedroom, and I find it hard for anyone to believe that any human being, other than a small child could live in the room 5x6. By "live" I mean physically exist. The emotional implications of a person living in that room 5x6—

Judge Hays: Not counting that room, Mrs. D'Alessio has four rooms. Counting the lodger there are four people. Is this considered adequate or inadequate judging by the size of the rooms?

The Witness: In terms of the number of rooms, as long as the children are small, you know, I would say it is barely adequate, but—

Judge Hays: She doesn't use that 5x6 room. She keeps a refrigerator in it.

The Witness: I assume that even on the real estate pages of the New York Times that would be called a large closet, and not—or maybe half a room. 5x6 doesn't strike me as a room.

Judge Hays: You agree you would count it as 4, rather (64) than 5.

Mr. Schwartz: We plan to go into the question of space more fully with our next expert who is a practicing urban planner. We have one final question for Dr. Gans and that is, assuming that a mother resides with two children, two young children and that they are recipients of public assistance, that the family's rental expense is $175 and that the Welfare Department pays this $175 and gives the family a total grant of approximately $336, the family has no other sources of income, in your opinion, Dr. Gans, what would be the effect of a $44 reduction in the grant on the mother and her two children because of the presence of this lodger in the home?

A. It really doesn't take a sociologist to answer that question. D'Alessio, I'm not sure if I get her name right, said herself, you know, the children, the family eats less, the money has to come from somewhere, it may come—it may make it difficult if one of the children get sick for the family to go to the hospital or to the clinic and you find this quite often that poor people don't have, you know, even the thirty-five cents to take them to the clinic or to the Welfare office to make an appointment.

What typically happens is that people, since you have to eat before anything else, the rent doesn't get paid (65) for a few months, and then you fall behind in your rent because you're taking food money out of the rent, and I think —it seems to be virtually impossible for any family which includes in this case a woman and two children, to eat and provide clothing and the other needs of human life on what I guess is about $160 a month.

This may have been adequate in 1940 or 1950, but certainly can't take care of the basic needs of the family in New York City in 1974.

Mr. Schwartz: Your Honor, the plaintiffs have no further questions.

Cross Examination by Mrs. Gordon:

Q. I refer you to the census chart that counsel showed you.

Does that have a number on it?

Mr. Schwartz: No.

Q. It is annexed to this Smith affidavit. Not being very good at charts, I would just like to read the last paragraph of this Smith affidavit and ask you if you agree with what Miss Smith said.

This table, meaning the chart, shows that in general, those groups of heads of households with the lowest median income namely white, black and Puerto Rican females (66) and similarly the largest percentage of persons living on income below the poverty level are considerably more likely to have one or more persons besides their immediate family living within their households than are those in the higher income groups.

Now, is that a correct statement of what the table shows pertinent to this case? A. Yes.

Q. Now, does this table show or does Mrs. Smith make any conclusion or for that matter do you make any conclusion from the table as to how many—what percentage of the families that have these lodgers have contributing lodgers as distinguished from non-contributing lodgers? A. This table doesn't—the census—

Q. This table doesn't show that. A. This table doesn't make any distinction on that issue.

Judge Hays: You are aware of no data on that?

The Witness: I don't know of any.

Q. I'm sorry I didn't quite catch that.

You don't know yourself of any distinction or studies which indicate what percentage of families with lodgers have non-contributing lodgers, is that right? A. I don't know of any published. It may be that the (67) Department of Social Services in New York has them.

Q. Do you know? A. I don't know.

Judge Hays: Is that all?

Mrs. Gordon: No, I'm sorry, your Honor, that is not.

Judge Hays: We are always hopeful.

Mrs. Gordon: I'll try my best.

Q. By the way, the median income for poverty as stated on this chart, are Welfare recipients below that median income for poverty or above it, Welfare recipients in the State of New York? A. The median income on this chart is for everybody.

Q. Right. Well, as compared to the median income for poverty, poor people, shown on that chart, does the median income for Welfare recipents go above that or below it, and I mean Welfare recipents throughout the State of New York? A. The chart doesn't show any median income for poverty. It shows what the percentage of people living below the poverty line in 1970 and in 1970 the poverty line for an urban family of four, I think was just around $4,000.

Q. What I think I am really trying to ask you is whether you have any information as to whether or not Welfare families with or without lodgers in the State of New York (68) live below the poverty line as defined in that chart or by some other statistics you have? A. In New York City, because of the higher—well—

Q. First, do you have any information? Let's start with that. A. It's crazy. Let me explain. The Federal poverty line which is really a budgetary decision which is made by the Federal government, is $4,000 in the country for the urban family of four. If it was made for New York, it would have to be higher because the rents are higher. This is the national poverty line.

I think it is true that because of the higher rental costs, in New York City, many families of four get around or a hundred or more above the poverty line. For New York State as a whole I would think that most families of four are below the poverty line, in other words, they don't get $4,000 a year.

Q. You mentioned that in New York in your opinion they would be below some nationally defined poverty line because the rents were higher, right? A. Yes.

Q. To your knowledge, do the Welfare recipients in New York City either by and large or all of them, do they get their actual shelter costs from the Department of Social (69) Services of the State of New York, do they get their actual rent? A. As far as I know, yes.

Q. Now, you indicated on the basis of that chart and your other testimony that it is indeed very likely that poor people have non-related persons living in this household, right? And the poorer you are the more likely you are to have these non-related persons living in the household, is that right? A. By and large they are relatives, you know, members of the extended family but they may also be the unrelated persons, yes.

Q. They may be some distant relative or some non-related person, right. Let's call that for ease of statement doubling up, okay? It might be tripling up or whatever, but let's call it doubling up.

Now, do poor people in your opinion double up, is one of the reasons they double up, because they can live more cheaply in a combined household than they can live independently? A. No, I think—that would be more typical of middle class people. I think poor people double up because they don't have any other alternative. In other words, there isn't enough money to go around.

(70) Judge Hays: That would imply they could live more cheaply by doubling up.

The Witness: They can live more cheaply, but the way the question was presented, you know, it was in order to save money, but what I was trying to say is quite often the doubling up is on the basis of necessity because there simply isn't enough money left to maintain two households.

Q. It is cheaper to maintain one household than it is to maintain two households? A. If you only have one money

for one household it is cheaper, but it is the only alternative.

Q. Who is the person who only has the money for one household in that statement you just gave me? You indicated that you felt that perhaps the fact that certain savings might accrue from maintaining one household rather than maintaining two households—

Mr. Schwartz: I object, your Honor.

Judge Bauman: Just a moment, I didn't understand the witness to say anything like that. I gathered he was suggesting perhaps in middle class double-ups there might be some fat left over, but as I understand him to say rather clearly, that there was no fat at all because there was no way these people who double up were going to survive if they had to live separately.

(71) Do I understand you in substance, correctly?

The Witness: Yes, sir.

Judge Bauman: I haven't heard the slightest suggestion of fat in these low income people.

Mrs. Gordon: I'm sorry, your Honor, I wasn't trying to allude to that. What I want to know is:

Q. If there is a lodger, you know, the person who comes into another person's household, it seems to me by your definition is a person who has no money, is that right, he can't afford to stay by himself, right? A. Right.

Q. That's what I mean. Now, when he goes into this other household, he is, I take it, by your definition, going into the household where the money is, is that right? A. Yes.

Q. By the way, when he comes into that household as in Mrs. D'Alessio's example, where she was three people in that 4-room apartment, however you want to characterize it, before Mr. Mattola came in, and now he comes in and there are four people there, that change from three to four, does

that affect the utilization of the space in that apartment in any way? A. What do you mean, the utilization of space?

Q. If one were to allocate space by fractions where (72) appropriate to that apartment and you were going to do it before Mr. Mattola came in—

Judge Hays: It is obviously that if there are four people in the apartment that they have less space than three people.

Q. That is what I wanted to know from the witness. Would it be fair to say Mrs. D'Alessio—

Judge Bauman: I don't think that's necessarily an area of expertise.

Mrs. Gordon: I want to know whether it is reasonable to say that.

Q. Is it reasonable to say that Mrs. D'Alessio and her two children occupied three-thirds of the apartment before Mr. Mattola came, and that after he came they occupied three-fourths of it? A. I suppose if people were machines you parked in a garage you could play these, you know, make these statistical determinations. I am not competent to talk about Mrs. D'Alessio, she has to talk for herself. Let me say, however, that what happens if an unrelated person comes in a household, what happens is the poor can't afford large apartments or especially the New York area, they get small apartments with small rooms, if they are Welfare, the Welfare Department, this is what the Welfare Department typically offers them so they (73) live in a minimum space to begin with.

When somebody else comes in they becomes more crowded, obviously. But the exchange—they make this sacrifice because again this is a perfect example of obligation of mutual help that I discussed earlier. You make a

sacrifice because then you obligate the other person to help you when you are in need.

Q. You indicated that where appropriate to Mrs. D'Alessio and the two children and Mr. Mattola the space that she described in this court was barely adequate, is that about right, the two bedrooms? A. Yes.

Q. I want to give you one other example:

The record establishes that a Mrs. Hurley, who is the named plaintiff in one of these cases, at the time of the events giving rise to these claims, she lived in a 3-bedroom apartment in Westchester, the living room, kitchen, three bedrooms and a bath. She had three children—

> Judge Weinstein: Three bedrooms?
>
> Mr. Gordon: Three bedrooms and bath and living room. The kitchen area had a dining area for that matter. She had three children and she lived at this point with her paramour who shared her bedroom.

Q. Is the space in that apartment adequate for (74) that family or pardon me, not that family, the Hurleys and the paramour? A. I think it depends on the size of the rooms, the age of the children, various other factors. You can't simply say three bedrooms is adequate or inadequate.

Q. Well, let's assume—the record does not establish the exact size of the room but I think it is a fair inference that if Mrs. Hurley were living in rooms that were 5x6 she probably would have said that in her papers, so I think that we can assume they are—

> Mr. Schwartz: Your Honor, I object to what is a fair inference, counsel is asking the—
>
> Judge Bauman: What does the record disclose? Why should we assume each of the rooms is 13x20 or any other area?
>
> Mrs. Gordon: Okay, I think that's all.

Judge Hays: All right, you may step down.

Mr. Schwartz: No further questions.

Judge Hays: We will take a five-minute recess.

(Recess taken.)

Mr. Schwartz: May we recall Dr. Gans for one final question?

Judge Hays: All right.

(75) Redirect Examination by Mr. Schwartz:

Q. Dr. Gans, in your opinion, what would be the effect on the relationship between the public assistance family and this lodger if the Welfare Department reduces the grant because of his presence? A. One possible consequence is that the lodger might be asked to pay the rent and I am not talking about your cases, but I am talking generally what happens in the poor community.

Quite often the relationship between men and women is a very fragile one, particularly when the men are, you know, are economically marginal in society and told that they are not useful economically, (a) the men don't have much money, (b) their egos are very sensitive and they might just say well, if you ask me to pay I will just move out on you and that would be the end of—in essence, the relationship would be sacrificed to whatever the rental money was.

The lodger, if the lodger is a man who is living with a woman, he becomes a lodger to serve a variety of functions in the family, helping raise the children, taking care of the house, I think the relationships are such that if the woman asked him for money, in most cases he doesn't have it, even if he had it he might say well, if you put it on that basis, I will just move out and then the woman is deprived of (76) the relationship with the man which is part of life and of the fatherly functions that this kind of lodger often performs.

Mr. Schwartz: That you.

Recross Examination by Mrs. Gordon:

Q. Is there anything in the regulations we are concerned with that is 352.30(d) and 352.31(a)(3)(IV) of the State Code of Rules and Regulations, anything in those regulations that prevents a poor lodger from obtaining a shelter allowance from his local county Department of Social Services and anything that prevents him from getting a basic grant?

Mr. Schwartz: Your Honor, I object. What's in defendant's own regulations is not a question to ask an expert in planning and sociology. The regulations speak for themselves.

Mrs. Gordon: I am asking him whether in his opinion there is anything in the content of those regulations that would prevent the poor lodger who you were talking about, the person who has no money to live separately, and comes in and shares a friend's apartment, is there anything that prevents him from getting a shelter allowance equal to his share and a basic grant in the regulations we are talking about?

Judge Hays: I don't think that's a proper question for Dr. Gans. It seems to me perfectly obvious there (77) is nothing in the regulations that prevents this man from getting an allowance, and Mrs. D'Alessio said in the case of her lodger he didn't want to associate himself with welfare, and he didn't have the allowance for that reason.

There wasn't any claim there was anything in the regulations that prevented it.

Judge Bauman: Are you suggesting it ought to be the public policy of the State of New York to encourage those people who are resisting going on

Welfare to go on Welfare, is that the point of your questions?

Mrs. Gordon: No, not at all, your Honor.

Thank you.

(Witness excused.)

Mr. Schwartz: Your Honor, plaintiffs call Paul Davidoff.

Judge Hays: This material that Dr. Gans testified to seems to me material that should have been agreed to by the parties so we shouldn't have to listen to it, so make it very brief.

Mr. Schwartz: Your Honor, I think as the cross examination indicates there is far from an agreement between the parties as to the cause of the relaship between the recipient and the lodger and the effect of the reduction in the grant.

(78) Judge Hays: Go ahead.

PAUL DAVIDOFF, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Mr. Schwartz: Your Honor, I will apologize sincerely for no having a resumé available, but I will try to keep the qualification questions as short as possible and submit a resumé to the Court and my adversary.

Direct Examination by Mr. Schwartz:

Q. Where do you reside, Mr. Davidoff? A. 18 Forest Park Avenue, Larchmont, New York.

Q. How long have you resided in New York? A. Nine years.

Q. What is your profession? A. I am an urban planner.

Q. Will you tell the Court what an urban planner does? A. An urban planner is concerned with the process of determining appropriate objectives and appropriate means of achieving those objectives so as to solve or mitigate the basic problems confronting urban communities seeking—he seeks in his plans to find ways to expand the opportunities of the citizens who reside within the urban community of which he works.

(79) Q. Have you studied urban planning? A. I have received a masters degree of urban planning from the University of Pennsylvania.

Q. Have you taught in your field? A. I have. I was a professor of urban planning at the University of Pennsylvania from 1956 to 1965 and was then professor of urban planning and chairman of the graduate department of urban planning at Hunter College of the City Univerity of New York.

Q. Have you done any planning work for any government agencies or any consulting work for any consulting agencies or municipalities? A. Yes, I have. I have been a town planner in the town of New Canaan, Connecticut, I have been a senior planner on the program of rewriting the zoning resolution of New York City back in the late 1950's, I have worked briefly with the New York City Planning Commission, I have been consultant to the President's Commission on Urban Housing, the Keiser Commission and the President's Commission on urban problems, the Douglas Commission, I have done special consulting work for the United States Commission on Civil Rights.

Q. Are you a member of any professional organizations? A. I am a member of the American Institute of Planners.

Q. What is your present position? (80) A. I am director of the Suburban Action Institute.

Q. Will you tell the Court what the Surburban Action Institute is, what its functions are, what its activities are? A. Yes. The Suburban Action is a non-profit agency

foundation sponsored in the main whose objective is to seek out opportunities for minority families, families of low and moderate income in the suburbs and particularly within the tri-state New York region.

Q. Have you and the Institute or you or the Institute engaged in a study of housing, specifically with respect to low income persons and Welfare recipents? A. The major part of our work is concerned with the locational opportunities and housing opportunities of families of very moderate income and included in that had been our concern for housing for Welfare recipients.

Q. In all of your various activities and study, have you studied the problems—not the problems, but have you studied the housing supply and the conditions of the housing supply and the rental market for low income persons in New York State? A. I have. It has been a basic part of my work. I have published a volume on the housing for New York State.

Q. Did that volume include an analysis of Welfare (81) recipients in housing? A. It did.

Q. Have you also studied and analyzed problems of overcrowding and space requirements? A. Yes, I have.

Q. Finally, have you also studied the various living arrangements for the various income levels? A. I have.

Mr. Schwartz: At this point we would ask Mr. Davidoff to be declared an expert witness in the areas of urban planning and housing.

Judge Hays: We will consider him qualified as an expert.

Q. Can you tell us whether you have made any specific analysis for the purpose of this case? A. I have reviewed a great deal of literature on the housing conditions of Welfare recipients in New York, in preparing for this testimony.

Q. In particular, have you consulted the 1970 census there? A. I have.

Q. Before we ask for your opinions on a number of questions, we are wondering if you could help the Court with some definitions. First, would you tell the Court what is (82) meant by the term "Vacancy Rate" and what standard is used, if there is a standard, to determine whether this rate is high or low. A. A vacancy rate refers to housing units or dwelling units which are not occupied, and which are available for rent, and the generally accepted standard of determining whether there is an adequate vacancy rate is now pinned at approximately 4% of the housing stock being vacant and available for purchase or for rent.

Q. Does the standard differ with respect to low income families? A. As to the 4% figures, no. That would be the figure in the housing market for low income families.

Q. Is there a standard definition of adequate space or overcrowding that urban planners use? A. There are a series of standards. It's a field of relative judgment. The census defines overcrowding as being more than one person per room. There have been determinations by the American Public Health Association of what adequate space standards would be. Professor Gans alluded to some older standards that they have employed, and I believe that they are now reissuing those standards. There are standards that have been examined for bare survival.

Architects and planners have established what you (83) might call Calcutta standards, what does it take for a family to breathe and to sleep? A bare minimum for purposes of health. But in our society, we have generally sought to establish standards that are above that, far beyond what is required for bare survival, but to try to create an amenable environment in which to reside, in which to find some privacy of family life.

The FHA, the various housing finance agencies around

the nation have established minimums. The Housing Authority of New York City has established minimum standards for space.

Q. Will you tell the Court what those standards are, if you know? A. They are very broad and they are not easy to define because they vary by room size, number of rooms per unit, the Housing Authority have suggested that in a one-bedroom unit something in the neighborhood of I believe it is in a range between 550 to 600 feet might be a minimum unit, and for a 2-bedroom unit either 720 to 750 feet.

Another measure that the Housing Authority here uses would be a first bedroom of something in the neighborhood of I think 140 to 150 square feet and a second bedroom of about 110 to 120 square feet.

Q. Is there a standard definition that urban planners (84) use to determine the percentage of rent to income that a family should expend on rent? A. Well, the figure that is generally employed today is a rather high ratio of rent to total income. It is 25%. It is assumed that a family normally cannot sustain its other needs if it is paying above 25% of its income for rent.

Planners and people in the field of housing have for a long time argued that that figure should be reduced to 20%, that almost all families earning above the median income pay less, well under 20% of their income for rent and that a more normal figure, allowing for adequate disposition to meet needs of other requirements for family living would pin it at 20%, but today, the figure is generally accepted in the law at 25%.

Q. Is there a generally accepted definition of standard housing? A. Well, again, there is a series of definitions that might be employed. One minimum definition is housing that comports with all the police power regulations determining the adequacies of a unit, in terms of health and

safety features, the existence of plumbing facilities within the unit, the non-existence of overcrowding within the unit. Those are a start.

More recently in a recent study published at (85) Harvard and MIT analyzing housing needs for the nation the question of overpayment has entered into the definition of standard housing which I think it properly belongs there, that is, payment above 25% income for rent reduces the dwelling unit to a substandard category not physically, but for the inhabitant of that unit and still further and not as yet well accepted standard but again as an expert I felt is a necessary condition to the appraisal of housing would be the environment surrounding the housing unit, that the space standards in one location might be offset by the openness surrounding the unit, the quality of the environment, whereas, in another situation an ample amount of space in a highly polluted area could not qualify as standard housing.

Q. As an expert witness, in view of your study and activities, would you give us your opinion as to the present supply of housing in New York State and the general condition of this supply? A. I think it has been recognized by people in the field of urban development and housing that for years the housing supply in New York State has been inadequate to meet the needs of the growing population of the State and in particular to meet the needs of families of low and moderate and increasingly middle income in the State, and that the stock has been inadequate to serve well the needs of minority (86) families, blacks and other non-whites.

This has been recognized in the prefaces to the various laws that have been adopted by the state since the middle '30s, a statement of acute housing need that persists within the state and seems to be incapable of being solved under present means.

Q. What are the factors that have contributed to this

inadequate supply of housing, particularly with respect to low income families? A. I think there are a combination of factors. Housing in our society is primarily the building of houses, the maintenance is primarily a private function, and the private market in housing has supplied in inadequate amount a number of dwelling units that rent or sell in the range that can be met by families of low income, the private market through the passage of used housing into hands of successive users does provide a supply of used housing for families who cannot afford the private housing being constructed for rental or sales, but by the time much of that housing passes through the many users and becomes available to families of low income, that housing is very often in substandard condition, below modern standards in terms of its health and its safety, its general environmental conditions and its rents are very high, so an abnormally high proportion of low income families (87) pay above 25% of their income for such housing.

The second component of housing at least since the '30s, has been the public. The public through investment in new housing, through special guarantees and insurances to assist the private market through special tax incentives, aiding individual families in terms of their ability to write off certain costs of housing, has assisted very greatly in increasing the supply of housing available to meet the needs of low income families, but here too, the role of the public has been greatly limited in terms of the desire to achieve safe housing for all families.

We are far, far behind the goals that have been set in various housing acts for meeting the needs of low income families. Congress in 1949 promised a decent home and a suitable living environment for every American family and there is a question as to whether the nation has made steady progress or not toward that.

In 1968 the Congress adopted a new housing act that

spoke of a goal of 26,000,000 new housing units being constructed over a ten-year period, and would be tens of thousands of units being constructed for families of low income. And while for a short period in the early 1970s, during the heyday of what was known as the 236 and 235 Housing Assistance Program, we began producing almost an adequate supply relative (88) to the goal, generally we have been far below the goal as a nation that had been set to meet the housing needs and in the past two years it has become a national disaster, there is a moratorium established by the executive on housing expenditures, very limited funds available for housing to meet the needs of low income families and the overall housing production of the nation has sunk to a terribly low position as of the last report in May.

So that we are far behind as a nation and as a state and in the particular counties of the state in meeting the goals that have been established for housing.

Q. What is the projection for the future? Do the experts have an opinion on whether the situation is likely to improve or get worse? A. By nature, planners are optimistic. They think by doing something you can improve something, so one hopes that we will at some time in the future begin to achieve levels of standards necessary in housing that have been achieved by many nations in Western Europe that have been troubling to us by our nation's relative indifference to housing conditions.

But as I view the near future, I see it as one in which it seems there is very little likelihood that families of low and moderate, and as I said before even (89) middle income will find their housing needs well met within standard housing.

Q. Give us your opinion as to whether there are any problems of overcrowding in New York State, particularly for low income persons. A. There are immense problems of overcrowding. I don't know if you wish for me to read

some of these findings of various public studies of Welfare recipients and Welfare conditions, but the findings of these organized studies have indicated that Welfare families live disproportionately in the worst housing in the most overcrowded housing in housing that is of exceptionally high rent relative to income abilities.

I have with me here data on the census of 1970 for the metropolitan area which indicates I think 78% of families earning under $5,000 are paying above 25% of their income for housing.

> Judge Weinstein: Excuse me, we can take judicial notice of all that and counsel can supply it to us so we don't have to take your time.

Q. Will you give us your opinion as to the extent, if any, that landlords refuse to rent to Welfare recipients because of a person's status as a Welfare recipient? A. The studies that I have read and the interviews (90) I have conducted indicate there is great discrimination against Welfare recipients, that many landlords refuse to rent to Welfare recipients.

Q. And what effect would this have on the availability of housing for the poor? A. I think there is a very short supply of decent housing available to begin with and that with that added level, it is a second degree of segregation. It is a second level of income and second degree of segregation because of the Welfare condition which restricts Welfare tenants to a very small and often ghettoized market of housing.

Q. Mr. Davidoff, I show you Plaintiff's Exhibit L which is already in the record, and which consists of the Westchester County Department of Social Services' rent schedule. As I say, it is already in the record so I will not trouble the Court by moving its admission into evidence.

In your opinion, Mr. Davidoff, is there a sufficient supply of standard housing for Welfare recipients within these rental limitations? A. No, there is not.

Q. Would you give us the basis of your conclusion? A. Studies of reports made on housing conditions by the Westchester Planning Commission and consultants' reports to the Westchester Planning Commission. My own observation (91) in my own work reviewing the housing conditions of Welfare recipients in a number of the cities of Westchester and Mount Vernon, New Rochelle and Portchester, reveal that the housing stock available is shockingly poor in condition and is substandard in large measure.

There is very little housing available for rented standard conditions at the rents shown on this table.

Q. Similarly, I show you a schedule entitled "Nassau County Department of Social Services, Maximum Shelter Schedules Plaintiff's Exhibit M, and it is already in the record.

Also, with respect to this schedule, would you give us your opinion as to whether there is sufficient supply of standard housing for Welfare recipients? A. Again, from my reading of reports issued in Nassau County by the County Planning Commission as well as again observations personally made in Westchester, I would say that there is a very restricted market of standard housing available in Nassau County at these rents. A very limited amount.

Q. I also show you Plaintiff's Exhibit N, which is a schedule of shelter allowances for New York City.

Judge Weinstein: N?

Mr. Schwartz: Yes. I don't believe this schedule is already in the record and therefore I would move for its admission.

(92) Mrs. Gordon: Your Honor, Mr. Schwartz, if I just may note, the defendants distributed to the panel their Exhibit DXB in evidence which has all the shelter schedules for all the counties.

Mr. Schwartz: In view of Mrs. Gordon's statement, I will withdraw the motion to move the schedule into evidence.

Q. Mr. Davidoff, in your opinion, is there a sufficient supply of standard housing to meet the needs of Welfare recipients in New York City within these rental limitations? A. No, there is not. The various studies that I allude to earlier that I have been reading, in particular to Welfare housing conditions in New York City indicate the very great amount of substandard housing occupied by Welfare recipients in the City and I think a major reason for that is the absence of standard housing at rents that comport with these standards.

Q. Mr. Davidoff, are you familiar with the term "lodger" as that term is used in the regulations involved in this case? A. I am.

Q. And are you familiar with the living arrangements of the plaintiffs in this case referring to the class of plaintiffs rather than any particular plaintiffs? A. In general, I believe I am.

(93) Q. In your opinion, are the living arrangements of the plaintiffs in this case, again referring to the class of plaintiffs, more prevalent among low income persons and Welfare recipients than the other income groups? A. I believe that they are.

Q. Would you give us the basis of this conclusion? A. Well, Dr. Gans was my instructor, and much of my knowledge of sociology in the field of planning, and I think he has stated it quite eloquently today, and the many facets of it, force this type of occupancy, and this form of relationship among the families of low income.

Q. Let us assume a rather or relatively complex set of facts. Let us assume that we have a mother who resides with her two daughters who are each approximately 10

years of age, the family, mother and two daughters are recipients of aid to dependent children type of assistance.

This family has two bedrooms, they have a living room, they have a kitchen, and they have a small room in which they keep their refrigerator.

Let me give you the dimensions of these rooms:

One bedroom is 12 x 15, one is 8 x 10, one living room is 12 x 11, the kitchen is 9 x 13½, and the room for the refrigerator is 5 x 6.

The mother resides in the larger bedroom. The (94) two children reside in the other bedroom. And the apartment they rent costs the family $175 per month and the Welfare Department provides a shelter allowance of $175 per month, and a total public assistance grant of approximately $340 per month.

The family has no other source of income. At some point in time, a male friend moves into the home, this male makes no financial contribution to the family. On the basis of this male friend's presence, the Department of Social Services reduces the grant by approximately $44 per month, because the friend is residing in the home.

The friend shares a double bed in the mother's bedroom. Based on these assumed facts, would you give the Court your opinion as to the following:

First, when the male friend did not reside in the home prior to his entry, would you say that the family had adequate space? A. I have tried quickly to multiply. I come up with a figure of—do you have the total figure of space, I think it comes up about 560 or some square feet?

Q. It was a figure in that vicinity. A. In that vicinity.

And I would say that such a unit is far below a modern standard for decent accommodations for a family of (95) that size. My understanding of the standard employed by the New York City Housing Authority, which certainly is not luxurious in its use of space, but rather tight in its

provision of space, is that that unit would be over 100 square feet below what they might deem appropriate for a two-bedroom unit and take the second bedroom, is shockingly small, an 8 x 10 unit would be considerably below what their standard would be for a second bedroom which is a very small room in and of itself.

So that I would say that is a very small substandard unit, if they occupied it by themselves.

Q. In view of the first answer, I hesitate to ask the question.

When the male friend did not reside in the home, did the family have excess space? A. No, there was no excess space by contemporary standards.

Q. The fact that the mother is now sharing a bedroom with this male friend, in your opinion, does this mean there was excess space before the male friend moved into the home? A. No.

Q. Does it mean that the mother and her two daughters have excess space now that the male friend is in the home? A. No. It hasn't created more space. There was inadequate space before he came in and that space remains (96) more inadequate today.

Q. Do you have an opinion as to what the effect of a $44 reduction in this family's grant would be on this family? A. I was trying to work it out as you were reading the numbers. If you have a base rent of $175 and then a total grant of $340, so that that leaves—what is it—$165 for non-rent purposes.

Q. That's approximately correct. A. $165 and you reduce that by $44, you have approximately $120 a month or what does that come out to a year, $1200 and—$1450 a year. To me, everything but rent to meet food, clothing, health, one hesitates to think about recreation, leisure and the amenities. I don't know how one can manage on the other items. It's abusive. It is difficult for families with considerably more income for that family size to get on, one

can't imagine how it is done. It is a level of survival as Dr. Gans talked about of just trying to manage, to barely survive.

Mr. Schwartz: I have no further questions, your Honor.

Judge Weinstein: Before we get to those questions, my notes indicate that the witness said at one point 179 rent, at one point 175. Which is right?

(97) Mrs. Gordon: Shelter allowance of 179. Our record, the record of the case, indicates 175. I will be glad to take the witness' word for the fact she is getting 179.

Judge Weinstein: All right.

Mrs. Gordon: It may have been increased since the last papers were filed.

Judge Bauman: Perhaps I am wrong, but I understood the allowance to be 179 and the rent to be 175. Am I mistaken about that? That's what I understood her to say.

Judge Hays: Is it possible that the allowance includes heat or lights or some such thing as that?

Mrs. Gordon: This is Mrs. D'Alessio we are talking about? Her shelter allowance includes heat. There is another applicant in this case whose shelter allowance doesn't include heat, she gets a separate one, but as to Mrs. Clark's, I'm afraid, my recollection is the allowance was 179 and certainly the allowance could not be higher than the actual rent.

Judge Bauman: All right.

Cross Examination by Mrs. Gordon:

Q. Is it Dr. Davidoff? A. Mister.

(98) Q. Mr. Davidoff, in your long list of eminent qualifications, I omitted to note down where you are presently working; what do you presently do? A. I am director of

Suburban Action Institute which is located in Yonkers, New York.

Q. I take it from your testimony the work of that is general, it is not confined to Westchester or New York State? A. It is primarily confined to the tri-state area with some contractual work to the State of Pennsylvania as well.

Q. Is it preeminently concerned with suburban housing as opposed to city housing or suburan planning as opposed to city planning? A. No, it joins the two. Its reason for existence is our belief that the cities of America cannot by themselves solve their disparate housing problems, that the suburbs must contribute the available lands that they have and the growing jobs they have to solve the urban problem. So, our concern is with the wellbeing particularly of families in the city who we feel cannot be adequately satisfied with their needs of opportunities in the city, so I would say our concern is with the entire metropolitan region.

Q. The metropolitan region including its surrounding (99) suburbs? A. That's right.

Q. Assume, would you, that we have a public assistance unit already living in an apartment, they are not looking for an apartment, they are already living in an apartment and we want to, for certain purposes, determine what share of the rent or what share of the shelter allowance for the unit is attributable to the members of that unit.

Could you tell me how the vacancy rate effects how those rental shares would be allocated if it does? A. It goes back to the very basic beginning of what the rent schedule will be to satisfy all Welfare recipients in standard housing so that the knowledge of the fact that the vacancy rate is now not 4% but somewhere like 2% and for low income families, 1%, suggests to those who have studied the issue that the rents are going to be relatively high for housing for families who will be Welfare recipients so the knowledge of that vacancy rent would be very important in es-

tablishing the rent schedule so that standard housing could be determined for those who would receive it.

Q. I think you misunderstood me.

I have an example here of a public assistance unit of several members who are already living in an apartment, they don't want to move. Their rent is fixed. Okay? For the (100) moment now it is fixed, and all I want to do is allocate shares of that rent to individuals living in that house.

Now, I want to know from you whether or not the vacancy rate in the community that they are living affects in any way how I should allocate those shares on the basis of a fixed rent in a subsisting unit. A. I suppose what I was saying is those earlier questions would have conditioned your thinking in terms of the specific questions you asked.

I don't see it that the vacancy rate per se to that particular unit has a response.

Q. Would it be relevant? A. It is relevant. I explained that in my earlier answer. It must be looking at the issues of an appropriate rent.

Q. I am not looking at the issue of an appropriate rent. I am taking a particular rent and dividing it among a particular number of people. Is it relevant to my division of the fixed rent among the given number of people? A. I am saying the knowledge of that effect of the vacancy rate on rents generally will fix what can be allocated to rent but once you have done that and made that determination then within that very narrow area you define it. No, I don't see the relationship.

(101) Q. Now, does a—in your opinion, would a regulation that prorates rent, a shelter allowance which is either equal to rent or perhaps somewhat less than rent—would that—prorates it between the members of a public assistance unit and a lodger who doesn't contribute and takes off that lodger's share, would such a regulation contribute to overcrowding in Welfare housing? A. Let me see if I understand the question.

Would the regulation as it is now which reduces—

Q. Right. Reduces the shelter allowance upon the presence of a non-contributing lodger. Does that regulation affect over-crowding in Welfare housing? A. It is conceivable that it might. I think that would take a study of the available housing market and what the choices and consequences would be with or without that regulation in terms of how families managed or families and individuals managed taking into account what Dr. Gans said of the proclivities of families of low income to try to find a level of survival.

I can't answer it simply.

Q. You haven't expressed an opinion. A. I think I would want to study the consequences of with and without to understand what would happen.

Judge Bauman: Let me ask you this:

(102) A question has been put to you. If a person's allowance has been cut by "X" percent and the expenses of running that house are to remain constant, then that money has got to be cut out of something else, it can either be cut out of the rent which would mean that the family unit would have to move to a much smaller place commensurate with the then existing family which again presumably will be cut if the man continued to live in the house, so to the extent that it might result in the rent budget being diminished in the family unit it could contribute to overcrowding, couldn't it?

The Witness: It could contribute very significantly in that set of circumstances.

Q. Now, in the example that I gave you with respect to housing availability, the vacancy rate, we had this public assistance unit living in a preexisting apartment, we take them as we find them in that apartment, whether it's good

—whether it is standard, substandard or above standard.

Now, upon the entrance of that lodger and the proration of the shelter allowance to exclude his pro rata share, what effect does that have, if any, on the quality of the housing that the recipients are living in, to wit, that apartment? A. I think the Judge's previous question suggested ways in which that chain of events could force removal from (103) those quarters into something less, in lesser condition than those.

Q. Let's just start with the apartment that we have.

Judge Bauman: Excuse me for interrupting but let me pursue that because it troubles me.

In the example that I gave, if the family decided that three people just needed all the luxury that is inherent in their own rental allowance and decided they were going to cut down on the size of their living quarters, and the man decided he was going to stay, presumably the rental allowance would again be diminished until they moved into a postage stamp, so I ask you ma'am, does that cut in the rental allowance have anything to do with the excess amount of housing or is it punitive for the relationship that is being undertaken by the man and the woman living together?

Mrs. Gordon: To answer the first point, your Honor, it is not punitive in our opinion.

To answer the second point, in terms of what you say,—to take it from I think perhaps an affirmative point of view. If you have an apartment with either a rent or a shelter allowance, and the recipient unit is living there and the lodger comes in, a share of that rent is cut out. If they then say, gee, if we move to a smaller apartment, maybe we will do better, the regulation comes into play again (104) and a share of the smaller apartment is taken away.

In that statement, you are absolutely correct, your Honor.

But the point is that the rent and the shares of the rent and that which you are taking away reflects that share that belongs to the lodger. The shares of the premises. If they live in a chicken coop—

Judge Buman: It comes down to one-third of nothing.

Mrs. Gordon: If they live in a chicken coop it would be a prorated share of the chicken coop. The point is there are other devices available to Social Services to prevent Welfare recipients from living in such circumstances, including taking away the children, and while Social Services believe that the family is living in adequate space, it leaves the choice of the meretricious relationship, which you point out, to the Welfare recipient, it doesn't interfere with her meretricious relationship, the State takes no position for or against.

Judge Bauman: I have two words for you, ma'am:

Some choice.

Mrs. Gordon: If the man came and applied for assistance, your Honor, and he wanted to live with Mrs. Hurley or Mrs. D'Alessio, the State and the locals would say (105) nothing about it. We don't require them to get married, we want to know that the person who is getting the benefit of a shelter allowance is in fact a needy person, and the only way we can know that is by having him come before us and demonstrating his need.

Once he demontrates that need, we don't care if he has a common law relationship with Mrs. Hurley or Mrs. D'Alessio and we don't care if instead of a male lodger it's her son or anyone else.

Judge Bauman: I don't want to extend the discussion. We will do it during the legal argument, however.

Q. I'm sorry, just listening to the example of Mrs. D'Alessio and her apartment which you indicated you felt didn't have enough space or Mrs. Hurley and her apartment, in your example, quality of the housing is established prior to the entry of the lodger, is it not, in other words, Mrs. Hurley is living in "X" apartment as was Mrs. D'Alessio and that apartment is either in your opinion standard, substandard or above standard, right, is that correct? A. Prior to the lodger?

Q. Before moving out if she indeed chooses to move out. A. Right.

Q. But the fact that the lodger comes into that (106) apartment doesn't change its quality, is that correct? A. No, it doesn't. It was substandard space for her family at an earlier stage and it remains that way.

Q. And that continues to be your opinion notwithstanding Professor Gans' testimony that it was barely adequate. Professor Gans testified here today that the space in Mrs. D'Alessio's apartment was I believe, he used the words "barely adequate." A. If you use the Calcutta judgment of just survival for health, if you use the bare minimum set up by the New York City Housing Authority, it is substandard. There are a range of choices you can make. I think that is substandard living condition, I think to know a little bit more, we want to know about the surrounding environment.

Q. The New York City Housing Authority standard that you are talking about, is that—does that standard pertain to— A. Two-bedroom units.

Q. Does it pertain to housing under the jurisdiction of the New York Housing Authority? A. Yes, housing that they are building and I am using that as a standard, a

modern standard of what a unit should contain in space for a family of low income.

Q. In other words, in establishing a standard they (107) are essentially building housing to conform to that standard in 1974, is that right? A. That's right.

Q. The Housing Authority did not purport to build nor establish a standard for old law tenements in New York City for example, is that correct? A. No, except they have housing programs and established standards to determine the eligibility of those and what they have done to modify those to make them liveable.

Q. Now, you commented on the fact when counsel showed you the Westchester County rent schedule which is Exhibit DX-B in evidence, you said you didn't think there was an adequate supply of housing available in Westchester County within those maximums, right? A. Right.

Q. Now, you were aware when you said that that Mrs. D'Alessio had an apartment which you acknowledgely considered inadequate but had an apartment where the rent was below or equivalent to that maximum, in other words, she had an apartment within the confines of the schedule. A. That's right.

Q. Now, were you also aware of the fact that Mrs. Hurley had a three-bedroom apartment also within the confines of (108) that schedule and indeed below it, below the maximum? A. Yes.

Q. Are you also aware of the fact that exceptions—exceptions in terms of the payment of the maximum allowances are made in Westchester, in Nassau, and indeed statewide? A. I am.

Mr. Schwartz: I object to the question. It has not been established on the record that any exceptions are granted from the schedule.

Judge Hays: Was that established?

Judge Weinstein: It's on the record.

Mr. Schwartz: It's a whole complicated problem. I would concede to the Court that exceptions in fact are granted in Westchester County but in depositions that we took in another action in this court, those depositions established clearly that the exceptions are quite the exception and it is quite limited and that schedule exists for a specific purpose and that is to keep the rent within the specific limit.

Judge Weinstein: You go ahead.

Mrs. Gordon: Thank you.

Q. Are you aware of the following fact that 93% of the Welfare caseload in the entire State of New York receives shelter allowances equivalent to their actual rents? (109) A. I am not.

Judge Hays: What happens to the other 7%

Mrs. Gordon: The other 7%, your Honor, it is essentially a Dandridge versus Williams, Rosado versus Wyman problem, the other 7% or approximately 7% have rent in excess of the shelter allowances they are paid, just as in a situation where you have a basic grant, one could find that the needs of a family would be let's say $100 a month and accordingly under Dandridge, one could pay as the basic grant something less than that 100% of standard of need and the shelter allowance situation as to the rent her 7%, they get less than the actual cost of their rent or less than 100% of their need.

Judge Hays: I wonder if you could speed up your question. I'd like to adjourn for lunch.

Q. If a four person public assistance unit lives in a given housing unit, is it fair to say that the use of that premises, the housing unit is allocable to four persons? A. Yes.

Q. If a fifth person moves in, is it fair to say that the use of that premises has now changed and is fairly allocable to five persons? A. Yes.

Q. If one were going to allocate the cost of a given premises among the numbers of people living there, would it (110) be reasonable to say that you could do it in the first instance by fourths and in the second instance by fifths? A. No, it would depend upon the relationship among the parties.

Q. If it was a man and wife, if it were a man and wife you might say, would you not, that the husband was responsible for paying her share and therefore you can allocate to him 100%? A. Or vice-versa.

Q. Yes, that's quite right.

However, if the individuals are not legally responsible to support each other, is it fair to make an allocation of cost based on an allocation of use of space? A. I think that's a private determination as it is between a husband and wife. Do they each put half of their wages or what into the rent, does one pay it all? I think it is a private relationship amongst the occupiers of the space as to how it would be allocated, as long as the rent is paid.

Q. In other words, you think it would be unreasonable if I wanted to use some allocation measure to allocate the cost by the number of people using the space, would that be unreasonable? A. It might or might not, depending upon the determination made by the occupants of the unit. I think they (111) are the ones who would determine how they would allocate that responsibility.

Q. In other words, you would leave the whole question to people who were living there? A. I think that would be perfect.

Q. Would you take the same position as Professor Gans, for example, with respect to Mrs. Hurley, that with her three-bedroom apartment, with the living room and the

kitchen, bath, and her three children herself and her lodger, that you would not care to assess whether or not she had adequate space unless you knew the size of the rooms? A. I'd have to know the size of the rooms to do that.

Mrs. Gordon: I think that's all, your Honors.

Mr. Schwartz: I have one final question, your Honor.

Redirect Examination by Mr. Schwartz:

Q. In your opinion, Mr. Davidoff, is it likely that the families in the plaintiff class who reside with lodgers have excess space? A. It is highly unlikely from my reading of the studies of the conditions of Welfare recipients.

Mr. Schwartz: I have no further questions.

(112) Mrs. Gordon: Excuse me, I did have one further question.

Recross Examination by Mrs. Gordon:

Q. You mentioned that—commented on, the Nassau County schedule. You mentioned that you were familiar with Nassau. In your opinion in Nassau, do you know whether Nassau has a low vacancy rate? A. 4,000 for families of low income?

Q. Yes. A. It is my belief it is a low vacancy rate.

Q. Now, is it logical to assume that in a low vacancy rate you would find lots of Welfare families living in temporary housing such as Welfare hotels and motels? A. That seems to be a practice.

Q. It would seem to generate that kind of— A. That's right.

Q. Do you know how many or what proportion of the

Nassau County caseload lives in such temporary type of housing as of the present time? A. I have seen the figure, but I don't have it with me. I don't know.

Mrs. Gordon: That's all.

(113) Judge Hays: You may be excused.

(Witness excused.)

Judge Hays: The Court will adjourn until 3:00.

Mrs. Gordon: Your Honor, could I just get a clarification. In preparing for this hearing, I had advised Mr. Schwartz that I thought it might be preferable on defendant's case to prepare affidavits for our people in lieu of direct testimony and that he could then cross examine and that I might redirect, and Mr. Schwartz agreed to that.

We have two affidavits which have already been distributed. We have one of the witnesses here, a Mrs. Harmon. The other witness, a Mr. Raklan from Nassau County would not be here and accordingly, Mr. Schwartz and I agreed that I would permit him to take a deposition at his convenience, immediately subsequent to this hearing, as soon as we could get Mr. Raklan in lieu of his testimony in open Court.

For the same reasons, or to convenience Mrs. Hurley, Mr. Schwartz and I also agreed that in the event the case worker took the stand in the Hurley matter, Mr. Schwartz would be permitted to take a deposition of Mrs. Hurley with my cross examining her along the lines of the situation with Mr. Raklan.

Now I would like to know if that procedure is satisfactory to the Court.

(114) Judge Hays: Well, how long is it going to take you to accomplish all these things?

Mrs. Gordon: We can do it almost immediately. We can probably do it tomorrow morning and get expedited transcript.

Mr. Schwartz: We can't be ready tomorrow morning. We have not seen the affidavits.

Mrs. Gordon: They have been distributed.

Judge Hays: Can you have everything done in one week?

Mrs. Gordon: Yes, your Honor.

Mr. Schwartz: Yes, your Honor.

Mrs. Gordon: I think that will expedite the hearing today.

(Luncheon recess.)

(115) AFTERNOON SESSION

2:30 p.m.

(Trial resumed.)

Judge Hays: Does that conclude your presentation?

Mr. Schwartz: Yes, your Honor.

The plaintiffs rest subject to their right to take the depositions as agreed upon.

On cross examination, if it may please the Court, Mr. Kahn will handle the cross examination of one of the defendants' witnesses, and Mr. Clark will handle the cross examination of the other.

Judge Hays: All right.

Will the State proceed.

Mrs. Gordon: Yes, your Honor.

Quite frankly, your Honors, I do not know whether it is appropriate to interpose a motion to dismiss for failure to make out a prima facie case in this proceeding. If it is, let me—

Judge Hays: Let us assume you have done so, and we will deny it.

Mrs. Gordon: Thank you.

The defendants call Linda Harmon. Mrs. Harmon. And as we have noted, Mrs. Harmon has submitted an affidavit which has previously been distributed to the members of the (116) panel, and accordingly, I will sit down and let Mr. Schwartz cross examine.

LINDA HARMON, called as a witness, being first duly sworn, testified as follows:

Cross Examination by Mr. Clark:

Judge Hays: Keep your voice up, please, Mrs. Harmon.

The Witness: Okay.

Q. Mrs. Harmon, you, of course, signed this affidavit and you are familiar with the information that is contained therein? A. Yes, I am.

Judge Weinstein: Excuse me, just so I can get this before me. Where is that affidavit? Is it among the other papers?

Mrs. Gordon: Yes, your Honor. There were two folders distributed. This affidavit is in a folder entitled "Proceedings Subsequent to Remand".

Judge Weinstein: I have it. Thank you.

Q. Now, calling your attention specifically to the third paragraph of that affidavit, Mrs. Harmon, you indicate a belief of the Department that its current shelter policies make sufficient funds available to public assistance (117) recipients for them to obtain adequate housing to the extent it is available.

Is that based upon some study or survey undertaken by the Department? A. We have undertaken several studies, the Department has, one in '71 and one in '72, and we have just completed one in '74. And as was indicated earlier, the '74 study, we found that 93% of the recipients were receiving the same allowance as they were paying for shelter which would mean that they were able to secure housing in the community and adequate to the extent that it was available.

Q. Mrs. Harmon, do you know how that study was undertaken, how that information was arrived at? A. Yes, I do.

Q. Can you tell me, please? A. Briefly, it was done—it was a sample of ADC cases in all districts in New York State, all Social Services Districts, and we gathered information on the rent actually allowed in the public assistance grant as well as what the recipients had said that they were paying for rent.

Q. Do you mean to say there was actual contact made with the client or was this taken from information in the Department's files? A. It was taken—the actual allowance was taken from the budget computation worksheet, and the actual allowance (118) that the recipient was paying was taken from the application form, recertification form in which the applicant states how much their rent is.

Q. I see, but there was no other independent verification of those two items made? A. No, it was done strictly from the documents that we had.

Q. Now, according to this affidavit, Mrs. Harmon, you have been a case worker yourself for the defendant, is that correct? A. I was a home economist with the local department.

Q. I see, I am sorry.

Now, how did you determine that the housing was adequate; you used the term here that these allowances were

"sufficient" to provide adequate housing. How was that determination made? A. Under the current shelter policy in New York State, local Social Services Districts establish the shelter allowances and in doing so, establish an allowance for their community that they deem to be adequate.

Q. I see, we are talking about a deemed situation now.

With regard to the survey that you just told us about, was there any actual determination based upon an examination of the housing to disclose whether or not it was (119) adequate? A. That was not a part of the study.

Q. I see. So then would it be fair to say that from the facts of that study, or from the results of that study, it was not possible to determine the character of the housing in terms of its adequacy? A. We didn't go into types of housing other than the actual allowances and the actual cost of the housing for only ADC cases, I would add.

Judge Hays: How is the housing chosen for the clients so far as the people that are on welfare? Does the welfare organization itself go out and look for housing, or do the individuals find their own housing and then submit claims for it?

The Witness: I would say that generally, and I am sure there may be one exception, recipients find housing on their own, or when they come to apply, they have housing.

If a recipient wishes help in locating other housing, local agency staff is available to help them, if they request the assistance.

But recipients locate their own housing and they may live wherever they choose to live, providing that the health and safety of the children is safeguarded.

Judge Hays: Is there some inspection of housing (120) to find whether it is adequately protecting the children?

The Witness: Well, I think generally there are health stadards that have to be met in terms of the housing.

Q. With respect to that, Mrs. Harmon, you say generally there are health standards that have to be met, but nobody from the Department goes out to examine the housing as a matter of fact to see that these standards are met? A. No one from the State Department does, but I am sure, and this I don't know—

Q. If you don't know, don't tell us. A. Local agencies are responsible for this, and what the local agency does, I can not speak to.

Q. Now, Mrs. Harmon, you are familiar with the sections in question, the regulations 352.30(d) which provide for the proration of rent when a non-relative resides? A. Yes.

Q. What do you understand the purpose of that section to be? A. The purpose of that section is to provide that when recipients have someone living with them, a lodger, a paying lodger, or a paying boarder-lodger, that they are provided with an income exemption, in the case of the lodger up to $15 is disregarded, and it is used to meet additional (121) expenses that the individual may incur in having that other person in the home.

Q. But in a situation, as we have in the cases before us, in which the lodger, so-called, actually makes this contribution, then under the operation of that regulation, a pro rata share is attributed to the lodger and deducted from the normal shelter grant.

What is the purpose of that? What are you to trying to accomplish? A. We are, in providing the public assistance grant, meeting the needs of the public assistance family, and in doing so, if there is another person in the household, we would provide the share of the household expenses, another non-paying member of the household, we

would provide that share of the expenses that were attributable to the public assistance family.

Q. Well, let me ask you this, Mrs. Harmon. You have indicated that what the Department tries to do is meet the need of the recipient household. Now, in the case of Annie Taylor, one of the plaintiffs in this case, are you familiar with the facts in this case, insofar as they pertain to Annie Taylor? A. I have read some. I have some—

Q. I call your attention to the fact that Annie (122) Taylor resides with her daughter and another adult sister, and that as a matter of fact, there was a lease executed between Annie Taylor and the landlord requiring her to pay a fixed amount of rent.

Now, in determining the needs of that family, are you saying that you do not go by the amount of money she must actually pay in determining the shelter allowance? A. Because there were three people in the assistance group in that case.

Q. Yes. A. And prior to a particular point in time, the sister, as well as Mrs. Taylor and the child, they were all in receipt of assistance. And when they were all in receipt of assistance, Mrs. Taylor and her daughter's share were two-thirds of the total amount of shelter, and the sister had a one-third share, because she was using one-third of the unit.

Q. But my question is this, Mrs. Harmon. In determining the need of the recipient, Annie Taylor, isn't her need what she must actually pay in order to stay in those premises or are you saying it is something else? A. It is for the unit, the housing unit. Her needs must be considered in the total, in her total living situation.

In this particular instance, her living situation (123) was such that she chose to live with another individual, in this case, her sister, and her share of the total living unit's expenses was—and what the public assistance grant was for—was for herself and her child. Therefore, the two-thirds of

the total shelter. Because the other person in the household was actually utilizing some of the space and the furniture and like that.

Q. Then you are saying to me, if I understand you correctly, Mrs. Harmon, that in spite of the fact that Mrs. Taylor, the plaintiff Taylor, was obligated by lease to pay a certain fixed amount for rent, that that is not how you determine what her shelter need was? A. No.

Q. Now, as a matter of fact, in the operation of this particular regulation that we are talking about, if you know, Mrs. Harmon, is any consideration or any individual fact-finding done in these particular cases or any others, to disclose what in fact is going on in the household, whether or not contributions are in fact being made, whether or not space is adequate, etc.? A. Well, in renting the apartment, the recipient, applicant-recipient, would be evaluating that for herself or himself when they made arrangements for that particular housing.

(124) What was the rest of the question?

Q. Well, the question was, is there an individual determination made in each case to determine whether in fact first of all contributions are being made, and, secondly, whether or not the space, that there is any excess space, as has been suggested earlier. A. As regards any excess space, if you mean someone from the Department determining that there is excess space?

Q. That's correct, before the operation of this regulation takes place. A. I don't believe any individual, case-by-case determination is made.

Judge Hays: Do you have maximum rental for families of various sizes?

The Witness: Yes.

Judge Hays: And the recipient can just rent any apartment that he wants so long as it is within that maximum?

The Witness: Yes, that's true.

Judge Hays: How many rooms there may be, he can have that apartment that he can get, as the maximum room he can get?

The Witness: Yes.

Q. Mrs. Harmon, I ask you this. Are you familiar with (125) the facts in the case of the plaintiff Ortey also? A. Yes, somewhat.

Q. If you recall in that case, the recipient and her son were living in quarters, two-bedroom quarters, and an allowance had been established for them of $145.00 a month. Subsequently, a third son—second son, rather—came home, adult son, non-recipient, moved in, and they sought to reduce the shelter allowance, pro rata.

Now I ask you this.

At the time that the Department okays the rental allowance, at the time when there is no non-recipient in the household, had the Department at that point made a determination that the space that they are paying for is adequate for that recipient family's need? A. If the recipient feels that it is adequate for their needs and the safety and well-being of the child is protected, then it would be assumed that it was adequate for their needs.

Q. Then at that point the Department would not have made a determination that there was any excess space that they were paying for? A. No.

Q. Then are you saying then that the mere fact that another person comes into that family unit to live changes (126) the finding as to whether or not there is excess space available or not, that mere fact alone? A. No. Many times, a family or a non-public assistance family, you have a set amount of space that you and your family are living in. If someone else comes to live with you, this is not to say that before you had too much space.

Q. That's my question. That result does not follow? A. Not necessarily that there was too much space before, or—

Judge Bauman: Put another way, if I may, this penalty of reducing the allowance has nothing to do with whether there is too much space or too little space, is that not the fact? It has nothing to do with space; it has to do with the fact that a non-recipient has moved in, isn't that what it's all about?

Judge Weinstein: You don't have to accept the characterization of a "penalty".

The Witness: It is not a penalty. I don't feel it is a penalty.

Judge Bauman: I withdraw the characterization. But it has nothing to do with too much or too little space; is that correct?

The Witness: Yes.

(127) Judge Bauman: Thank you.

Q. That was the point I had in mind, Mrs. Harmon. Mrs. Harmon, I ask you this question, that is, under the regulations, insofar as it perstains to recipients of welfare, public assistance, the recipient is given his cash grant in just about all cases, is that not correct? A. Yes.

Q. And the recipient is free to do with this cash grant as she pleases, is that not correct? A. Providing the health and welfare of the child or children is safeguarded.

Q. Right. So that when a grant, including shelter allowance and basic needs is given to the recipient, there are no strings attached to it, she can dispose of it in any way she wants with that one proviso that she not jeopardize the health or welfare of her children? A. He or she can spend it to meet the needs of their family.

Q. Would that include, for example, having a guest in for a meal? A. Having a guest in for a meal?

Q. Yes. A. If that's what they chose to do.

Q. Would that include a guest staying overnight? (128) A. I would assume so, because's that's not something we would monitor.

Q. At what point would you become interested—withdrawn.

Is there any period of time that a guest must stay in the home before the operation of the regulation that we have in mind comes into play? A. I don't think there is a specific time limit set forth. There isn't a specific time limit set forth in the regulation.

Q. But you do make a distinction between a guest who is there for a weekend and a guest who is there for a month? A. I think general practice is that a guest doesn't stay for a month. At least it hasn't—I wouldn't consider anyone that stayed with me a month a guest.

Q. Are you aware of any policy about this particular matter? A. Policy as defined—

Q. State policy, yes. A. What constitutes the difference between a guest and a lodger?

Q. Right. A. No, I don't believe there is any stated state policy.

Q. Mrs. Harmon, there is nothing in the regulations (129) that prohibits a recipient from making a gift of a part of their grant if they so desire, provided they do not violate the exception you indicated, namely, that they do not place their children in any kind of danger?

Mrs. Gordon: Objection, your Honor. Is the question, is there nothing in the regulations, or the state law, as meeting 18—

Q. Specifically, talking about 18 NYCRR? A. To the best of my knowledge, and I am sure I don't have as great a knowledge of the regulations as you do, a recipient, for example, can give a gift to a friend, or to a member of their family. There would be nothing to prohibit that.

Judge Hays: Does the recipient decide that he should assign his right to receive the payment from he state to somebody that he felt needed it more than he did?

The Witness: No, a recipient can't do that, because the eligibility is determined on the basis of his circumstances and his resources and any income. I don't see how a recipient could assign their monthly public assistance check to someone else.

Mr. Clark: I have no further questions. Thank you.

Judge Hays: Mrs. Gordon.

Redirect Examination by Mrs. Gordon:

Q. Mr. Clark was asking you previously some methods on how you—not how you, but how the local district, if you knew, checked out the circumstances of a given AFDC public assistance unit with respect to whether the child was being deprived or what have you.

I would like to ask you, are you familiar with the concept of the home visit? A. Yes.

Q. Is that one of the devices to your knowledge that the local agency uses in order to see if the child is being properly cared for or if the habitation is suitable? A. I believe they do use that.

Q. Judge Hays asked me before, during the course of the plaintiff's case, that with respect to the—what was the effect, or who constituted, or what was the effect of the—I beg your pardon.

The people in the case load, that 7% who did not receive shelter allowances equal to their rent, that 7% who would in effect receive less shelter allowance than they were paying in rent.

Do you have any information as to who is in that 7% and why they are there? (131) A. Well, part of the 7%

includes persons who are employed, for example, the ADC mother who would be employed and be eligible for the 30 and a third work exemptions so that they would have extra money, and many of the recipients have elected to supplement their rent allowance from the agency with that money, and in some instances, the extra money for rent is only—is a matter of $5.00, and the recipient has chosen to take this money out of their grant and supplement the rent allowance to that amount of money.

Judge Hays: Would the people who are subject to the lodger restriction also be subject to the 7%?

The Witness: No, I don't believe so.

Judge Hays: They are not?

The Witness: No.

Q. One last question.

To your knowledge when the local district makes a grant of public assistance to a public assistance unit, is it limited in making that grant to providing benefits or sustenance, regardless of how you characterize it, for that public assistance unit alone, or is it permitted to give benefits to that public assistance unit to be used for the benefit of another who has not come to the local agency and been determined to be eligible? A. The grant is given for the applicant, and the (132) persons that he or she state in the application, and in the case of the mother and her children, she would come in and make application for herself and her children, and the public assistance grant would be determined on the basis of her immediate family's needs and not neighbors and friends.

Q. Do you know whether or not state law provides for penalties, criminal penalties, against a welfare recipient who uses her grant for the benefit of another not determined to be eligible or who diverts that grant for the benefit of another not determined to be eligible?

I am only asking whether or not you know if there are penalties in the law. A. I don't particularly—I am not sure. I don't know the law in that regard.

Mrs. Gordon: Thank you very much.
Mr. Clark: Just one further question.

Recross Examination by Mr. Clark:

Q. With respect to the last series of questions by Mrs. Gordon, correct me if I am wrong, if I understood your testimony earlier, when a grant is given to a client of public assistance, there's no strings attached to that grant, that client can use that grant as long as she sees fit?

Judge Hays: She has testified she couldn't assign (133) the right to receive the grant to somebody else so at least that string is attached, according to her testimony.

Judge Bauman: She can't use it, obviously, as the witness has testified, in such a way as to result in harm or to harmfully affect the minor children, I gather, in the household, so there are some limitations.

I understood you to say that that is a limitation, that the money must be used in the first instance so as not to jeopardize the well-being of infant children among others; is that right?

The Witness: Yes.

For example, there is money in the public assistance grant for food and for clothing and for other items of need. The Department does not tell the recipient how much money they would have to spend for food, how much for clothing, and that they have to have a telephone, for example. This is something that they can choose to have or not have, and the

amount of money they spend of food, they govern. It is not something that is set forth that you have to spend X number of dollars.

Q. So the client has some area of discretion? A. There is some discretion, yes.

Q. Now, in your reading the facts with respect to the plaintiffs in this case, is there any evidence in any of (134) these cases that these plaintiffs are violating either of the two exceptions that you have stated? A. There are other exceptions, I am sure.

Q. Or any other that you may know? A. Well, in meeting shelter needs, we are meeting the shelter needs of that family, their share of the total shelter needs, and by providing two-thirds of the shelter needs we are meeting the needs of that shelter family when there is another non-recipient in the household.

Q. No, that's not my question.

My question is this. You have indicated there are situations or certain exceptions which prohibit certain use of public assistance funds by the recipient. Now, the use that the funds were put to in this case, as you know from the facts in this case, were any prohibitions violated?

Mrs. Gordon: Objection, your Honor. This witness has testified that she is not familiar with the law of the State. The law of the state is codified and if indeed these recipients committed any crime or violated any other administrative regulation, other than the ones in issue herein, such would appear by comparison of their facts to the law as it is promulgated and not by this witness' statement as to the laws applied to the facts.

Mr. Clark: Your Honors, I would simply point out (135) in the witness' affidavit she makes a statement that she is fully conversant with the policies

and regulations which affect the receipt of welfare in the State of New York, and I therefore think she could answer this question.

Judge Hays: Well, let's see what she thinks.

Could you answer the question?

Judge Weinstein: If you don't know, just say you don't know.

The Witness: I am not sure of his question.

Mr. Clark: Nothing further.

Judge Weinstein: I have a question.

By Judge Weinstein:

Q. In Paragraph 5, you say, "The exemption of $15 monthly," and then later in the paragraph you say, "The $15 minimum payment for lodging."

Can you explain the two usages of the $15? A. It is the same $15.

Q. Is it an exemption or minimum payment? A. For the lodger that pays $15 or more, the first $15 is exempt, and the $15 is the point that determines whether or not shelter is prorated, so in fact the first $15 is an income exemption, it is also the minimum that has been established.

Q. So, in the case of the young lady who testified (136) this morning, Mrs. D'Alessio, who is getting $179 a month for shelter, she could have taken only $15 a month from the lodger and complied? A. Yes.

Q. And then she would have been given an exemption of $15? A. Yes.

Q. And so she would have gotten the same $179? A. Yes.

Q. So all she had to do, if she knew enough about the regulations and all these exemptions, was tell her social worker, "I am getting $15 a month from him," take the $15, give it to him back, and the whole thing would have been avoided, is that right? A. Yes.

Judge Weinstein: All right. Thank you.

Mrs. Gordon: Your Honor, I just would like to call to your Honor's attention, you might want to pursue that a little further, because you had asked me previously what happens when the lodger pays, and it might be relevant to ask what happens if he pays more than the $15.

Judge Weinstein: You are free to ask any question you want. It is your witness.

Mrs. Gordon: Thank you.

(137) Redirect Examination by Mrs. Gordon:

Q. Just so the record may be clear, Mrs. Harmon, what happens if the non-boarding lodger pays more than $15? A. The excess of $15 is applied against the needs of the public assistance family's income.

Mrs. Gordon: That is all. Thank you very much.

(The witness was excused.)

Mrs. Gordon: At this time, your Honor, we call Carol Yvonne Raspberry, and that is the witness upon which I volunteer to make an offer of proof.

Your Honors, as the several Courts who have considered this matter have noted, and as defendants have contended all along, one of the purposes and one of the effects of 352.30(d) is to avoid having a non-recipient in the household who is getting a free ride on the welfare system to the extent of free rent.

Now, as I noted previously to the Court this morning, these lodgers tend to fall into two categories, those who are claimed to be needy, but who have failed to apply for public assistance, and those who in fact have the capacity to contribute but refuse to do so.

Now, in Mrs. Hurley's case, she is a recipient, defendants contend, who had with her a lodger who had the (138) capacity to contribute.

Mr. Schwartz: We object, your Honor. That is a conclusion that counsel reached. There is no evidence in the record as to that. As a matter of fact, the evidence is quite to the contrary.

Mrs. Gordon: The record estabilshes that the individual—the uncontested facts in the record establish that the individual with whom Mrs. Hurley was living as her lodger was at all times employed, that he was employed prior to the time that the proration was to become effective, and that he was employed during the time the proration was effective.

Now, if in fact he had the capacity to contribute, and if in fact he made contributions to Mrs. Hurley, and then—and with the same level of capacity—and then resided in her household but refused to make such contributions in terms of the rental allowance, then that individual was getting a free ride on the welfare system, and the situation of Mrs. Hurely is a perfect example of one of the situations or one of the abuses that this regulation is designed to prevent.

Now, the purpose of calling Mrs. Raspberry is that she is a case worker who made a home visit to Mrs. Hurley's apartment, several home visits to Mrs. Hurley's apartment, and she is being called to testify to the contributions which (139) she observed in terms of furniture, furnishings, that this lodger in fact made to Mrs. Hurley a very short time prior to the point in time when the allowance was prorated, and as I indicated, the record establishes that this individual continued to be employed during the time that the allowance was prorated, and I would also call to the Court's attention that plaintiffs' counsel, when he had Mrs. D'Alessio on the stand, asked in his own direct examination the extent of the contributions that Mr. Mattola had made to her, and I respectfully request that the Court allow us to call Mrs. Raspberry so that she may testify to the kinds of contributions or the kinds of fur-

nishings that she observed in the home of Mrs. Hurley and the events surrounding the circumstances of that hom visit.

Mr. Kahn: Your Honors, I would object to any testimony that Mrs. Raspberry would give with respect to Mrs. Hurley on several grounds.

First, the affidavit that was submitted by defendants in response to the motion for summary judgment failed to state issues of fact. There are no issues of fact to be tried. Specifically, in fact, the defendants admitted an allegation which is made in Plaintiffs' 9-G statement to the effect that no financial support or contribution was made to plaintiff or her children, or on her behalf by her (140) male friend, and further, that he was not under any legal obligation to provide any support to her or her three children. That is specifically admitted in the 9-G statement. And Rule 9-G states that the papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there existed genuine issues to be tried. There is nothing in defendants' 9-G statement to indicate there is any material issue of fact to be resolved here.

Furthermore, in the decision which was rendered by the Commissioner a finding is also made of no contribution and no support. There was no inquiry at that time into whether or not gifts had previously been furnished to Mrs. Hurley for the simple reason that that would be wholly irrelevant to the question of whether or not Mrs. Hurley's grant should be reduced, and for the same reason it is irrelevant at this time.

First of all, all the gifts that were made were in fact made before the date of the reduction, which is challenged here, and, secondly, there is nothing in the regulations or in any statute which pertains to the administration of the Social Services program which indicates that a friend or a

relative of a recipient, whether or not he or she lives in the apartment, may or may not—rather, may (141) not give a gift of furniture or of anything else to the recipient.

And for those reasons, your Honor, we would object to any testimony given by Mrs. Raspberry.

Mrs. Gordon: Your Honors, I would just like to comment for a moment. There is no inconsistency with either plaintiffs' 9-G statement and this proof.

The 9-G statement and the no contribution specified therein goes to the period, four-month period, when Mrs. Hurley's shelter allowance was prorated. We do not contend that this ADR, the paramour, contributed to her during that four-month period. What we contend is that during that four-month period, Mr. ADR was getting a free ride on the welfare system because he at all times had the capacity to pay his own share of the rent as evidenced by the fact of the substantial contributions made to her just prior to these events, and that given his capacity to contribute and the operation of the regulation against him, that is an illustration of the proper effect of the regulation, and indeed—I am sorry, I am talking so much I am getting a little lost in my own morass here.

In addition, plaintiffs themselves, not on their motions for summary judgment, but at this trial here, have adduced evidence on what is supposed to be the nature (142) of the living arrangements among welfare recipients.

We believe it very pertinent to this case to show what the nature of the living arrangement was between Mrs. Hurley and this ADR, particularly insofar as it provides a perfect illustration of the appropriate operation of the regulation.

In addition, I think the testimony will be very brief, your Honor.

Judge Hays: We will not take the evidence.

Mrs. Gordon: Very well.

Judge Hays: Do you have any other witnesses?

Mrs. Gordon: The only additional witness is Marvin Rachlin with respect to whom we have an agreement to take a deposition.

Judge Hays: Do we have the affidavit?

Mrs. Gordon: Yes, your Honor.

Judge Hays: Mr. Schwartz, do the plaintiffs have anything further?

Mr. Schwartz: We would like to reserve a few minutes for oral argument on the law.

Judge Hays: You will both have an opportunity for oral argument on the law.

Judge Weinstein: Perhaps we can cut short the need. Why do you have to take Mr. Rachlin's deposition? (143) He is an attorney.

Mr. Schwartz: We may well not have to take it, your Honor. As I said, I have never looked at that affidavit.

Judge Weinstein: Take a look at it quickly. He argues the law.

Mr. Schwartz: If that's all it is, then—

Judge Weinstein: What does it add to your case?

Mrs. Gordon: It adds a substantial amount, going to the living conditions among the poor in Nassau County.

Judge Weinstein: Well, think seriously about whether you want to take a deposition.

Is that the only thing open?

Mrs. Gordon: Yes. There are a couple of other additional things open. Having received the surveys, the studies from plaintiff just last night, and his having received ours, I guess this morning, we had both agreed that if we deemed any other studies relevant to the issue, we would simply submit them to the Court on a stipulated basis.

Judge Weinstein: You can do all that and we can take judicial notice. I don't understand why you need any further depositions at all.

Mrs. Gordon: The only deposition now that Mrs. Hurley's information has been excluded is Mr. Schwartz' (144) cross examination of Mr. Rachlin. If Mr. Schwartz doesn't want to cross examine Mr. Rachlin, certainly we don't need an additional deposition.

Judge Weinstein: I don't see any point. There is so much material in the public domain here. What's the point of it? I don't say this critically. Almost everything we heard this morning could have been submitted in briefs referring to the public records.

Mr. Schwartz: Most likely there will be no need for a deposition, but I would like an opportunity after—

Judge Weinstein: I want to close up the whole hearing now, close it up on the facts. Take a look at it quickly and let's not drag it along. Let's see if we can finish this case.

Mr. Schwartz: We find the deposition unnecessary, your Honor.

Judge Hays: We will hear argument now.

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General Social and Economic Characteristics—New York, 1970 Census, Plaintiffs' Exhibit "A".

(See opposite page ☞)

Table 48. General Characteristics by Race, for Urban and Rural Residence: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

The State

	The State				Urban			
	Total	White	Negro	Persons of Puerto Rican birth or parentage	Total	White	Negro	Persons of Puerto Rican birth or parentage
AGE								
Total, all ages	18 236 951	15 885 867	2 166 560	873 471	15 604 415	13 303 727	2 126 961	861 875
Under 5 years	1 485 771	1 236 076	231 528	113 253	1 246 477	1 001 359	228 356	112 600
5 to 9 years	1 682 178	1 412 136	253 329	115 995	1 386 621	1 121 958	249 481	115 [illegible]
10 to 14 years	1 720 544	1 468 171	237 180	105 625	1 423 167	1 176 752	232 530	105 642
15 to 19 years	1 574 511	1 361 285	197 379	86 586	1 333 833	1 126 327	192 852	85 726
20 to 24 years	1 355 392	1 170 730	168 185	80 722	1 194 258	1 013 404	164 730	83 049
25 to 29 years	1 213 857	1 027 339	168 811	75 983	1 049 158	866 299	166 080	75 241
30 to 34 years	1 043 563	871 721	154 899	66 974	889 984	721 710	152 361	66 407
35 to 39 years	1 028 564	873 379	140 770	58 507	876 560	724 618	138 410	58 036
40 to 44 years	1 128 175	981 750	134 611	46 608	972 428	828 805	132 560	46 311
45 to 49 years	1 133 476	1 004 698	118 976	36 901	983 289	856 894	117 077	36 618
50 to 54 years	1 059 090	933 353	97 619	26 277	920 156	816 747	95 930	26 [illegible]
55 to 59 years	921 483	895 599	78 794	20 632	857 280	793 210	77 404	20 477
60 to 64 years	833 946	793 632	64 578	15 [illegible]	755 563	696 780	63 473	11 [illegible]
65 to 69 years	696 456	665 835	50 223	9 959	669 072	555 479	49 328	9 [illegible]
70 to 74 years	545 457	513 092	32 123	5 783	481 565	446 968	31 566	5 767
75 years and over	722 536	682 841	35 555	7 345	625 064	586 507	34 803	7 274
Under 18 years	5 868 131	4 962 044	847 125	390 110	4 874 944	3 958 433	837 543	387 [illegible]
21 years and over	11 495 366	10 159 992	1 276 976	433 272	9 968 308	8 670 269	1 188 500	431 [illegible]
65 years and over	1 966 491	1 836 558	117 901	23 057	1 715 641	1 568 864	115 597	22 [illegible]
Median age	29.4	31.5	24.8	20.9	30.9	32.4	24.9	[illegible]
Male, all ages	8 713 567	7 619 550	919 798	416 923	7 397 242	6 331 089	878 194	413 391
Under 5 years	757 428	632 012	116 142	57 411	634 713	511 507	114 562	57 [illegible]
5 to 9 years	858 762	722 191	128 071	58 871	736 846	572 949	124 269	58 [illegible]
10 to 14 years	876 495	748 666	119 653	53 [illegible]	722 660	598 284	117 032	53 323
15 to 19 years	765 914	681 478	96 430	42 873	660 789	559 923	93 483	42 243
20 to 24 years	617 327	539 247	70 410	35 385	540 102	464 608	68 219	34 [illegible]
25 to 29 years	577 635	497 698	72 305	34 787	498 165	420 131	70 614	34 [illegible]
30 to 34 years	501 036	424 197	68 200	31 214	425 254	350 487	66 585	30 749
35 to 39 years	496 690	426 696	62 710	26 916	419 970	351 794	61 271	26 591
40 to 44 years	540 876	475 056	60 209	21 330	462 267	398 041	59 065	21 156
45 to 49 years	536 077	477 498	53 410	16 922	461 446	404 100	52 376	16 770
50 to 54 years	495 564	448 792	42 523	12 213	425 992	380 452	41 559	12 [illegible]
55 to 59 years	460 592	422 674	34 846	9 522	398 263	361 251	33 [illegible]	9 [illegible]
60 to 64 years	393 [illegible]	365 [illegible]	27 [illegible]	[illegible]	345 174	315 191	25 [illegible]	[illegible]
65 to 69 years	302 968	279 428	20 660	4 062	260 647	237 260	20 362	4 [illegible]
70 to 74 years	227 304	211 918	13 522	2 410	195 889	180 896	13 239	2 402
75 years and over	279 542	263 619	13 820	2 642	239 015	223 636	13 456	2 601
Under 18 years	2 991 375	2 534 422	426 424	198 135	2 478 829	2 032 444	418 521	196 553
21 years and over	5 308 227	4 725 901	523 965	197 044	4 561 397	3 994 284	511 924	194 689
65 years and over	809 814	754 965	48 202	9 314	695 551	642 292	47 057	9 016
Median age	29.0	29.9	22.8	19.5	29.4	30.5	22.8	19.4
Female, all ages	9 523 384	8 266 317	1 166 762	455 548	8 207 173	6 972 718	1 148 767	453 228
Under 5 years	728 343	604 064	115 386	55 842	611 764	489 852	113 794	55 585
5 to 9 years	823 416	669 945	125 258	57 124	679 775	549 010	123 201	56 778
10 to 14 years	844 079	719 505	117 497	51 996	700 507	578 468	115 496	51 719
15 to 19 years	788 597	679 807	100 949	43 713	673 044	566 404	99 369	43 473
20 to 24 years	738 065	630 983	97 775	45 337	654 156	548 796	96 511	45 181
25 to 29 years	635 922	529 641	96 506	41 196	550 993	446 168	95 416	40 953
30 to 34 years	542 527	447 524	86 699	35 760	464 730	371 223	85 776	35 609
35 to 39 years	531 874	446 683	78 060	31 591	456 590	372 824	77 139	31 445
40 to 44 years	587 299	506 694	74 402	25 278	510 161	430 764	73 555	25 155
45 to 49 years	597 399	527 160	65 566	20 039	521 843	452 794	64 701	19 928
50 to 54 years	563 436	504 561	55 096	14 064	494 164	436 295	54 372	13 983
55 to 59 years	520 901	472 925	44 748	11 110	459 017	411 959	44 098	11 042
60 to 64 years	464 759	425 252	37 121	8 555	410 389	371 569	36 627	8 518
65 to 69 years	392 530	361 207	29 363	5 867	348 425	317 669	28 966	5 841
70 to 74 years	321 153	301 174	18 601	3 373	285 616	266 032	18 327	3 345
75 years and over	442 994	419 192	21 735	4 703	386 049	362 871	21 347	4 673
Under 18 years	2 876 755	2 427 622	420 701	191 975	2 396 115	1 955 989	414 022	190 926
21 years and over	6 187 159	5 443 901	685 011	238 228	5 406 911	4 676 005	676 576	237 057
65 years and over	1 156 677	1 081 573	69 699	13 943	1 020 090	946 572	68 640	13 859
Median age	31.9	33.1	26.3	22.1	32.5	34.1	26.4	22.1
RELATIONSHIP TO HEAD OF HOUSEHOLD								
Total population	18 236 951	15 885 867	2 166 560	873 471	15 604 415	13 303 727	2 126 961	861 875
In households	17 760 612	15 494 419	2 104 679	860 862	15 227 343	12 980 166	2 077 489	846 441
Head of household	5 935 060	5 214 645	653 669	243 071	5 179 440	4 469 558	636 169	241 935
Family head	4 609 638	4 069 135	497 950	212 922	3 964 530	3 432 346	492 038	211 930
Male	4 016 334	3 638 034	340 683	153 065	3 414 567	3 043 273	335 735	152 116
Female	593 304	431 101	157 267	59 857	549 963	389 073	156 303	59 814
Primary individual	1 325 422	1 145 530	165 718	30 149	1 214 910	1 037 212	164 151	30 005
Male	492 518	412 718	71 345	16 133	448 104	369 594	70 386	16 033
Female	832 904	732 812	94 373	14 016	766 806	667 618	93 765	13 972
Wife of head	3 839 847	3 487 944	315 515	143 940	3 260 481	2 915 585	311 133	143 091
Other relative of head	7 709 190	6 575 530	1 053 633	463 096	6 527 048	5 413 312	1 039 638	460 943
Not related to head	296 715	216 280	71 863	10 755	260 374	181 731	70 529	10 472
In group quarters	476 339	391 448	59 881	11 609	377 072	323 541	49 452	9 384
Inmate of institution	237 582	176 645	39 836	8 419	173 549	141 795	31 051	6 477
Other	238 557	214 803	20 045	3 190	203 523	181 746	18 401	2 907
FAMILIES BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS								
Total families	4 609 638	4 069 135	497 950	212 922	3 964 538	3 432 346	492 038	211 930
With own children under 18 years	2 474 016	2 130 307	317 647	159 093	2 096 070	1 757 630	313 884	158 353
With own children under 6 years	1 171 987	991 882	165 916	91 411	984 011	806 785	162 689	90 957
Husband-wife families	3 846 468	3 493 334	317 582	144 138	3 265 723	2 919 115	313 017	143 165
With own children under 18 years	2 110 358	1 891 376	196 475	106 776	1 762 437	1 547 752	193 495	106 [illegible]
With own children under 6 years	1 027 274	907 444	106 931	63 203	849 412	731 997	105 290	62 775
Families with female head	593 304	431 101	157 267	59 857	549 963	389 073	156 303	59 814
With own children under 18 years	315 066	200 749	111 339	48 [illegible]	293 016	179 470	110 740	48 049
With own children under 6 years	128 838	72 574	55 173	26 383	121 507	65 629	54 853	26 357

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Table 48. General Characteristics by Race, for Urban and Rural Residence: 1970 – Continued

(Data based on sample; see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

The State

	Urban farm				Rural farm			
	Total	White	Negro	Persons of Puerto Rican birth or parentage	Total	White	Negro	Persons of Puerto Rican birth or parentage
AGE								
Total, all ages	2 332 217	2 284 885	35 357	6 266	300 319	297 255	2 262	380
Under 5 years	217 403	213 151	2 899	534	21 891	21 566	273	39
5 to 9 years	264 228	259 123	3 645	689	31 329	31 055	203	54
10 to 14 years	261 185	255 518	4 355	747	36 192	35 841	295	56
15 to 19 years	239 913	234 471	4 295	839	30 765	30 487	232	57
20 to 24 years	146 024	141 927	3 311	675	15 110	14 899	144	38
25 to 29 years	150 232	146 763	2 612	700	14 467	14 277	119	42
30 to 34 years	139 364	136 028	2 381	525	14 215	13 983	157	42
35 to 39 years	135 772	132 143	2 262	423	16 782	16 618	98	43
40 to 44 years	137 399	134 821	1 879	280	18 348	18 124	172	17
45 to 49 years	131 045	128 791	1 767	239	19 142	18 993	132	24
50 to 54 years	119 173	117 117	1 554	186	19 671	19 459	135	4
55 to 59 years	106 906	105 162	1 339	150	17 297	17 227	51	5
60 to 64 years	93 771	92 364	1 002	107	14 612	14 458	103	-
65 to 69 years	75 140	74 023	830	70	11 286	11 163	65	5
70 to 74 years	58 622	57 890	515	36	8 330	8 274	42	-
75 years and over	86 590	85 533	711	66	10 862	10 771	41	5
Under 18 years	881 741	863 306	13 650	2 496	111 445	110 305	932	135
21 years and over	1 350 276	1 324 492	19 253	3 296	176 802	175 021	1 253	210
65 years and over	220 352	217 446	2 056	172	30 498	30 228	148	10
Median age	27.2	27.3	23.8	22.4	30.1	30.2	24.6	25.2
Male, all ages	1 163 274	1 137 972	28 446	4 152	153 051	151 519	1 138	176
Under 5 years	111 467	109 462	1 454	309	11 258	11 103	146	7
5 to 9 years	135 502	133 294	1 712	361	16 064	15 949	79	36
10 to 14 years	135 342	132 075	2 530	497	18 463	18 307	121	9
15 to 19 years	109 029	105 611	2 837	605	16 096	15 944	110	15
20 to 24 years	69 312	66 822	2 141	545	7 913	7 817	50	12
25 to 29 years	72 370	70 359	1 630	481	7 300	7 208	61	18
30 to 34 years	69 065	67 042	1 543	504	6 777	6 668	72	16
35 to 39 years	68 426	66 699	1 372	294	8 294	8 203	67	31
40 to 44 years	69 356	67 859	1 696	160	9 253	9 126	108	11
45 to 49 years	65 338	64 295	945	133	9 293	9 193	89	19
50 to 54 years	59 411	58 262	907	109	10 161	10 078	58	-
55 to 59 years	52 954	52 062	716	87	9 365	9 341	20	-
60 to 64 years	46 442	45 701	543	70	7 571	7 468	68	-
65 to 69 years	36 350	35 790	451	49	5 941	5 878	47	-
70 to 74 years	27 213	26 854	254	8	4 202	4 168	29	-
75 years and over	35 427	34 935	335	41	5 100	5 048	29	-
Under 18 years	455 467	445 426	7 481	1 524	57 079	56 552	422	58
21 years and over	657 409	643 125	11 345	2 248	89 421	88 492	696	107
65 years and over	99 020	97 579	1 040	98	15 243	15 094	105	-
Median age	26.4	26.5	24.0	22.5	29.6	29.6	30.8	27.2
Female, all ages	1 168 943	1 147 863	34 911	5 114	147 268	145 736	1 124	204
Under 5 years	105 936	103 749	1 465	225	10 633	10 463	127	32
5 to 9 years	128 426	125 829	1 933	328	15 265	15 106	124	18
10 to 14 years	125 843	123 503	1 825	250	17 729	17 534	174	27
15 to 19 years	100 884	98 860	1 458	234	14 669	14 543	122	18
20 to 24 years	76 712	75 105	1 170	130	7 197	7 082	94	26
25 to 29 years	77 862	76 404	982	219	7 167	7 069	58	24
30 to 34 years	70 359	68 986	838	125	7 438	7 315	85	26
35 to 39 years	66 796	65 444	890	129	8 498	8 415	31	17
40 to 44 years	66 043	66 932	783	117	9 095	8 998	64	6
45 to 49 years	65 707	64 585	822	106	9 849	9 780	63	5
50 to 54 years	59 762	58 855	647	77	9 510	9 411	72	4
55 to 59 years	53 952	53 080	623	63	7 932	7 886	27	5
60 to 64 years	47 329	46 663	459	37	7 041	7 000	35	-
65 to 69 years	38 790	38 233	379	21	5 345	5 305	18	5
70 to 74 years	31 409	31 036	261	28	4 128	4 106	13	-
75 years and over	51 163	50 598	376	25	5 782	5 723	12	5
Under 18 years	426 274	417 880	6 169	572	54 366	53 753	510	77
21 years and over	692 867	681 367	7 908	1 048	87 381	86 529	527	123
65 years and over	121 332	119 867	1 016	74	15 255	15 134	43	10
Median age	28.0	28.1	23.3	20.8	30.7	30.7	30.3	23.8
RELATIONSHIP TO HEAD OF HOUSEHOLD								
Total population	2 332 217	2 284 885	35 357	6 266	300 319	297 255	2 262	380
In households	2 253 276	2 217 053	24 979	4 068	300 193	297 180	2 260	353
Head of household	570 481	562 769	5 438	916	74 627	74 000	474	76
Family head	531 027	524 558	4 536	878	70 740	70 203	412	71
Male	39 454	38 [illegible]	902	38	3 887	3 797	62	5
Female	99 915	97 918	1 410	135	10 597	10 400	157	9
Primary individual	39 240	38 098	831	100	5 174	5 026	108	-
Male	60 675	59 820	579	35	5 423	5 374	29	9
Wife of head	512 400	505 [illegible]	4 041	779	66 966	66 450	341	70
Other relative of head	1 029 355	1 009 963	12 933	1 992	142 787	141 255	1 162	161
Not related to head	31 125	29 474	1 257	246	5 216	5 075	77	37
In group quarters	78 941	67 822	10 378	2 198	126	75	51	27
Inmate of institution	44 033	34 850	8 765	1 942	-	-	-	-
Other	34 908	32 982	1 593	256	126	75	51	27
FAMILIES BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS								
Total families	570 481	562 729	5 438	916	74 627	74 000	474	76
With own children under 18 years	337 604	332 877	3 465	675	40 142	39 800	295	65
With own children under 6 years	175 893	168 221	1 841	426	17 083	16 879	186	29
Husband-wife families	513 731	507 690	4 191	872	62 614	66 529	374	71
With own children under 18 years	315 268	309 265	2 734	637	37 663	37 379	246	65
With own children under 6 years	161 471	159 242	1 473	400	16 291	16 205	168	28
Families with female head	39 454	38 231	902	38	3 867	3 797	62	5
With own children under 18 years	20 539	19 638	559	38	1 511	1 471	40	-
With own children under 6 years	6 955	6 [illegible]	302	26	366	348	18	-

The question on household relationship was asked of all persons. The item on type of unit was filled in the census office for each household.

Household.—A household includes all the persons who occupy a group of rooms or a single room which constitutes a housing unit. A group of rooms or single room is regarded as a housing unit when it is occupied as separate living quarters; that is, when the occupants do not live and eat with any other persons in the structure, and when there is either (1) direct access from the outside of the building or through a common hall or (2) complete kitchen facilities for the exclusive use of the occupants of the household. The average population per household is obtained by dividing the population in households by the number of household heads.

Relationship to head of household.—Five categories of relationship to head of household are recognized in this report. More detailed categories of relationship appear in subsequent reports.

1. *Head of household.*—One person in each household is designated as the "head," that is, the person who is regarded as the head by the members of the household. However, if a married woman living with her husband was reported as the head, her husband was considered the head for the purpose of simplifying the tabulations.

Two types of household head are distinguished—the head of a family and a primary individual. A family head is a household head living with one or more persons related to him by blood, marriage, or adoption. A primary individual is a household head living alone or with nonrelatives only.

2. *Wife of head.*—A woman married to and living with a household head, including women in common-law marriages as well as women in formal marriages. The number of women in this category may not always be the same as the number of "husband-wife households" and the number of "husband-wife families," because of minor differences in the weighting of the data.

3. *Child of head.*—A son, daughter, stepchild, or adopted child of the head of the household of which he is a member, regardless of the child's age or marital status. The category excludes sons-in-law and daughters-in-law. (See definition of "own child" below.)

4. *Other relative of head.*—All persons related to the head of the household by blood, marriage, or adoption but not included in either the category of "wife of head" or "child of head."

5. *Nonrelative of head.*—All persons in the household not related to the head by blood, marriage, or adoption. Roomers, boarders, lodgers, partners, resident employees, wards, and foster children are included in this category.

Group quarters.—All living arrangements other than households are classified by the Bureau of the Census as group quarters. Persons living in group quarters are shown in this report as either "inmate of institution" or "other group quarters" defined as follows:

Inmate.—Persons under care or custody at the time of enumeration in homes, schools, hospitals or wards for juveniles, the physically handicapped, or the mentally handicapped; homes or hospitals for mental, tuberculosis, or other chronic disease patients; homes for unwed mothers; nursing, convalescent, and rest homes; homes for the aged and dependent; and correctional institutions are enumerated as "patient or inmate" of an institution—regardless of their length of stay in that place and regardless of the number of people in the particular place. These persons are all shown in the tabulations as "inmate of institution."

Other group quarters.—A separate living quarters is called a group quarters if there are five or more persons unrelated to the head or, if there is no designated head, six or more unrelated persons in the unit. Places that fall into this category are rooming and boarding houses, communes, workers' dormitories, and convents or monasteries.

Persons residing in certain other types of living arrangements are classified as living in group quarters, regardless of the number or relationship of people in the unit. These include persons residing in military barracks, on ships, in college dormitories, or in sorority and fraternity houses; patients in short-term medical and surgical wards of hospitals who have no usual residence elsewhere; staff members in institutional quarters; and persons enumerated in missions, flophouses, Salvation Army shelters, railroad stations, etc. These people are shown in the tabulations as "in other group quarters."

Detailed Housing Characteristics—New York, 1970 Census, Plaintiffs' Exhibit "B".

(See opposite ☞)

Table 32. Occupancy and Plumbing Characteristics for the State: 1970

[Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

The State Urban and Rural, Rural Nonfarm, and Occupied Rural Farm	The State					The State—Percent distribution				
			Rural					Rural		
	Total	Urban	Total	Nonfarm	Occupied farm	Total	Urban	Total	Nonfarm	Occupied farm
Total population	18 236 931	15 604 415	2 632 536	2 332 217	300 319	...	...	...	...	...
All housing units	6 298 323	5 364 292	953 931	869 124	84 807	100.0	100.0	100.0	100.0	100.0
Vacant—seasonal and migratory	138 919	20 368	118 521	118 521	...	2.3	0.4	14.2	15.8	...
All year-round housing units	6 159 314	5 323 904	835 410	750 603	84 807	100.0	100.0	100.0	100.0	100.0
POPULATION										
Population in housing units, 1970	17 746 652	15 193 859	2 552 793	2 253 673	299 120	...	...	...	...	...
Per occupied unit	3.0	2.9	3.4	3.4	3.5	...	...	...	...	...
Owner	3.4	3.4	3.4	3.4	3.5	...	...	...	...	...
Renter	2.6	2.6	3.2	3.1	3.6	...	...	...	...	...
Population in housing units, 1960	16 397 079	14 822 555	2 574 524	2 247 978	326 546	...	...	...	...	...
Per occupied unit	3.1	3.1	3.5	3.5	3.8	...	...	...	...	...
TENURE, RACE, AND VACANCY STATUS										
All occupied units	5 913 749	5 160 624	753 125	668 318	84 807	96.0	96.9	90.2	89.0	100.0
Owner occupied	2 795 669	2 187 642	608 027	532 943	75 084	45.4	41.1	72.8	71.0	88.5
Percent of all occupied	47.3	42.4	80.7	79.7	88.5	...	...	...	...	...
Cooperative or condominium	115 327	115 212	175	143	32	1.9	2.2	–	–	–
White	2 655 036	2 053 058	601 998	527 453	74 545	43.1	38.6	72.1	70.3	87.9
Negro	129 039	125 056	3 983	3 607	376	2.1	2.3	0.5	0.5	0.4
Renter occupied	3 118 080	2 972 982	145 098	135 375	9 723	50.6	55.9	17.4	18.0	11.5
White	2 568 454	2 407 575	140 879	131 361	9 518	41.4	45.2	16.9	17.5	11.2
Negro	524 817	521 565	3 252	3 077	175	8.5	9.8	0.4	0.4	0.2
Vacant year-round units	245 565	163 280	82 285	81 785	...	4.0	3.1	9.8	11.0	...
For sale only	22 565	14 129	8 416	8 416	...	0.4	0.3	1.0	1.1	...
Homeowner vacancy rate	0.8	0.6	1.4	1.6	...	...	...	...	...	...
With all plumbing facilities	20 735	13 712	7 023	7 023	...	0.3	0.3	0.8	0.9	...
For rent	95 082	83 830	11 252	11 252	...	1.5	1.6	1.3	1.5	...
Rental vacancy rate	3.0	2.7	7.2	7.7	...	...	...	...	...	...
With all plumbing facilities	86 979	77 277	9 702	9 702	...	1.4	1.5	1.2	1.3	...
Rented or sold, awaiting occupancy	21 662	15 808	6 054	6 054	...	0.4	0.3	0.7	0.8	...
Held for occasional use	61 616	20 511	41 107	41 107	...	1.0	0.4	4.9	5.5	...
Other vacant	44 458	29 002	15 456	15 456	...	0.7	0.5	1.9	2.1	...
All year-round housing units	6 159 314	5 323 904	835 410	750 603	84 807	100.0	100.0	100.0	100.0	100.0
PLUMBING FACILITIES										
With all plumbing facilities	5 985 853	5 203 398	782 455	702 282	80 173	97.2	97.7	93.7	93.6	94.5
Lacking some or all plumbing facilities	173 461	120 506	52 955	48 321	4 634	2.8	2.3	6.3	6.4	5.5
Lacking only hot water	27 459	17 418	10 041	9 037	1 004	0.4	0.3	1.2	1.2	1.2
Lacking other plumbing facilities	146 002	103 088	42 914	39 284	3 630	2.4	1.9	5.1	5.2	4.3
PIPED WATER IN STRUCTURE										
Hot and cold	6 094 091	5 299 377	794 714	713 261	81 453	98.9	99.5	95.1	95.0	96.0
Cold only	47 796	23 298	24 498	22 342	2 156	0.8	0.4	2.9	3.0	2.5
None	17 427	1 229	16 198	15 000	1 198	0.3	–	1.9	2.0	1.4
FLUSH TOILET										
For exclusive use of household	6 053 620	5 249 065	804 555	722 468	82 087	98.3	98.6	96.3	96.3	96.8
Also used by another household	70 524	67 687	2 837	2 588	249	1.1	1.3	0.3	0.3	0.3
None	35 170	7 152	28 018	25 547	2 471	0.6	0.1	3.4	3.4	2.9
BATHTUB OR SHOWER										
For exclusive use of household	6 022 961	5 228 306	794 655	713 232	81 423	97.8	98.2	95.1	95.0	96.0
Also used by another household	70 915	67 954	2 961	2 671	290	1.2	1.3	0.4	0.4	0.3
None	65 438	27 644	37 794	34 700	3 094	1.1	0.5	4.5	4.6	3.6
COMPLETE KITCHEN FACILITIES										
All year-round units	6 159 314	5 323 904	835 410	750 603	84 807	100.0	100.0	100.0	100.0	100.0
For exclusive use of household	6 040 018	5 233 037	806 981	724 017	82 964	98.1	98.3	96.6	96.5	97.8
Also used by another household	21 845	21 268	557	523	34	0.4	0.4	0.1	0.1	–
No complete kitchen facilities	97 451	69 579	27 872	26 063	1 809	1.6	1.3	3.3	3.5	2.1
Renter occupied	3 118 080	2 972 982	145 098	135 375	9 723	100.0	100.0	100.0	100.0	100.0
For exclusive use of household	3 041 152	2 901 734	139 418	130 143	9 275	97.5	97.6	96.1	96.1	95.4
Also used by another household	17 635	17 382	304	286	18	0.6	0.6	0.2	0.2	0.2
No complete kitchen facilities	59 242	53 866	5 376	4 946	430	1.9	1.8	3.7	3.7	4.4
ACCESS										
With direct access	6 150 065	5 315 193	834 872	750 108	84 764	99.8	99.8	99.9	99.9	99.9
Lacking direct access	9 249	8 711	538	495	43	0.2	0.2	0.1	0.1	0.1
TELEPHONE										
[illegible]	5 913 749	5 160 624	753 125	668 318	84 807	100.0	100.0	100.0	100.0	100.0
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	90.3	90.1	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

The State
Urban and Rural, Rural Nonfarm, and Occupied Rural Farm

	The State									
			Rural							
	Total	Urban	Total	Nonfarm	Occupied farm					
ROOMS										
All year-round units	6 159 314	5 323 984	835 330	750 603	84 727	100.0	100.0	100.0	100.0	100.0
1 room	169 329	163 414	5 915	5 056	859	2.8	3.1	0.8	0.7	1.0
2 rooms	292 912	280 563	12 349	11 374	975	4.8	5.3	1.5	1.5	1.2
3 rooms	1 060 267	1 018 325	41 942	39 814	2 128	17.2	19.1	5.0	5.3	2.5
4 rooms	1 324 743	1 144 920	179 823	116 884	62 939	21.5	21.5	14.9	15.6	74.3
5 rooms	1 082 677	958 036	124 641	101 953	22 688	17.6	18.0	14.9	13.6	26.8
6 rooms	1 036 542	859 576	176 966	161 259	15 707	17.1	16.1	21.2	21.5	18.5
7 rooms	569 955	463 350	106 605	112 155	14 450	9.6	8.7	15.2	14.9	17.1
8 rooms	344 251	257 595	86 656	74 164	12 492	5.6	4.8	10.4	9.9	14.7
9 rooms or more	267 664	182 141	85 523	66 943	18 580	4.3	3.4	10.2	8.9	21.9
Median	4.8	4.6	5.8	5.7	6.7	...	...	...	...	...
Owner occupied	2 795 669	2 187 642	608 027	532 943	75 084	100.0	100.0	100.0	100.0	100.0
1 room	4 520	3 340	1 180	986	194	0.2	0.2	0.2	0.2	0.3
2 rooms	13 151	9 852	3 299	2 955	344	0.5	0.5	0.5	0.6	0.5
3 rooms	68 552	74 384	14 168	12 726	1 362	2.2	3.4	2.3	2.4	1.8
4 rooms	295 010	223 012	71 998	65 861	6 137	10.6	10.2	11.8	12.4	8.2
5 rooms	555 429	430 161	126 268	115 345	10 923	19.9	19.7	20.8	21.6	14.5
6 rooms	787 072	646 568	140 504	126 485	14 019	28.2	29.6	23.1	23.7	18.7
7 rooms	504 641	398 745	105 896	92 700	13 195	18.1	18.2	17.4	17.4	17.6
8 rooms	367 850	234 445	73 405	61 824	11 581	11.0	10.7	12.1	11.6	15.4
9 rooms or more	238 444	167 135	71 309	54 001	17 308	8.5	7.6	11.7	10.1	23.1
Median	6.1	6.0	6.1	6.0	6.8	...	...	...	...	...
Renter occupied	3 118 080	2 972 982	145 098	135 375	9 723	100.0	100.0	100.0	100.0	100.0
1 room	152 348	149 430	2 908	2 845	63	4.9	5.0	2.0	2.1	0.6
2 rooms	263 747	258 785	4 962	4 731	231	8.5	8.7	3.4	3.5	2.4
3 rooms	926 091	907 073	19 018	18 282	736	29.7	30.5	13.1	13.5	7.6
4 rooms	914 555	878 475	36 080	34 278	1 802	29.3	29.5	24.9	25.3	18.5
5 rooms	496 776	465 979	30 797	29 032	1 765	15.9	15.7	21.2	21.4	18.2
6 rooms	248 518	225 373	23 145	21 456	1 689	8.0	7.6	16.0	15.8	17.4
7 rooms	70 658	57 488	13 200	11 946	1 254	2.3	1.9	9.1	8.8	12.9
8 rooms	26 680	18 645	7 835	6 924	911	0.9	0.6	5.4	5.1	9.4
9 rooms or more	18 687	11 534	7 153	5 881	1 272	0.6	0.4	4.9	4.3	13.1
Median	3.7	3.7	4.8	4.8	5.7	...	...	...	...	...
Year-round vacant for sale	22 565	14 129	8 436	8 436	...	100.0	100.0	100.0	100.0	...
1 to 3 rooms	2 067	1 389	678	678	...	8.9	9.4	8.1	8.1	...
4 and 5 rooms	7 300	4 507	2 793	2 793	...	32.4	31.9	33.2	33.2	...
6 and 7 rooms	8 668	5 585	3 081	3 081	...	38.4	39.5	36.5	36.6	...
8 rooms or more	4 572	2 708	1 864	1 864	...	20.3	19.2	22.1	22.1	...
Median	5.9	5.9	5.9	5.9	...	...	...	...	...	...
Year-round vacant for rent	95 082	83 829	11 252	11 252	...	100.0	100.0	100.0	100.0	...
1 room	7 962	7 427	535	535	...	8.4	8.9	4.8	4.8	...
2 rooms	7 461	6 584	877	877	...	7.8	7.9	7.8	7.8	...
3 rooms	24 469	22 164	2 305	2 305	...	25.7	26.4	20.5	20.5	...
4 rooms	28 763	25 729	3 034	3 034	...	30.3	30.7	27.0	27.0	...
5 rooms	16 140	13 950	2 190	2 190	...	17.0	16.6	19.5	19.5	...
6 rooms or more	10 287	7 976	2 311	2 311	...	10.8	9.5	20.5	20.5	...
Median	3.8	3.7	4.1	4.1	...	...	...	...	...	...
PERSONS										
Owner occupied	2 795 669	2 187 642	608 027	532 943	75 084	100.0	100.0	100.0	100.0	100.0
1 person	293 647	223 693	69 954	62 005	7 949	10.5	10.2	11.5	11.6	10.6
2 persons	756 887	581 365	175 522	153 356	22 166	27.1	26.6	28.9	28.8	29.5
3 persons	495 056	396 086	98 970	86 447	12 523	17.7	18.1	16.3	16.2	16.7
4 persons	532 952	430 316	102 636	91 083	11 553	19.1	19.7	16.9	17.1	15.4
5 persons	362 555	288 344	74 211	65 450	8 761	13.0	13.2	12.2	12.3	11.7
6 persons	193 192	148 800	44 392	38 471	5 921	6.9	6.8	7.3	7.2	7.9
7 persons	101 935	77 455	24 480	20 917	3 563	3.6	3.5	4.0	3.9	4.7
8 persons	32 762	23 130	9 632	8 383	1 249	1.2	1.1	1.6	1.6	1.7
9 persons or more	26 683	18 453	8 230	6 831	1 399	1.0	0.8	1.4	1.3	1.9
Median	3.2	3.2	3.1	3.1	3.1	...	...	...	...	...
Renter occupied	3 118 080	2 972 982	145 098	135 375	9 723	100.0	100.0	100.0	100.0	100.0
1 person	901 664	872 701	28 963	27 542	1 421	28.9	29.4	20.0	20.3	14.6
2 persons	937 529	900 562	36 967	34 764	2 203	30.1	30.3	25.5	25.7	22.7
3 persons	512 314	485 687	26 627	24 835	1 792	16.4	16.3	18.4	18.3	18.4
4 persons	378 999	357 237	21 762	20 241	1 521	12.2	12.0	15.0	15.0	15.6
5 persons	196 767	182 785	13 982	12 856	1 126	6.3	6.1	9.6	9.5	11.6
6 persons	98 180	90 188	7 932	7 213	719	3.1	3.0	5.5	5.3	7.4
7 persons	62 221	57 304	4 917	4 446	471	2.0	1.9	3.4	3.3	4.8
8 persons	14 795	12 876	1 919	1 698	221	0.5	0.4	1.3	1.3	2.3
9 persons or more	15 671	13 642	2 029	1 780	249	0.5	0.5	1.4	1.3	2.6
Median	2.2	2.2	2.7	2.7	3.2	...	...	...	...	...
PERSONS PER ROOM										
Owner occupied	2 795 669	2 187 642	608 027	532 943	75 084	100.0	100.0	100.0	100.0	100.0
0.50 or less	1 482 565	1 147 307	335 258	289 440	45 818	53.0	52.4	55.1	54.3	61.0
0.51 to 0.75	711 638	574 543	137 115	121 332	15 783	25.5	26.3	22.6	22.8	21.0
0.76 to 1.00	478 186	374 667	103 519	93 375	10 144	17.1	17.1	17.0	17.5	13.5
1.01 to 1.50	108 663	80 571	27 492	24 669	2 823	3.9	3.7	4.5	4.6	3.8
1.51 or more	15 197	10 554	4 643	4 127	516	0.5	0.5	0.8	0.8	0.7
Renter occupied	3 118 080	2 972 982	145 098	135 375	9 723	100.0	100.0	100.0	100.0	100.0
0.50 or less	1 314 329	1 248 141	66 398	61 784	4 614	42.2	42.0	45.8	45.6	47.5
0.51 to 0.75	787 541	751 933	35 608	33 371	2 237	25.3	25.3	24.5	24.7	23.0
0.76 to 1.00	705 556	674 474	31 082	29 073	2 009	22.6	22.7	21.4	21.5	20.7
1.01 to 1.50	230 761	221 485	9 296	8 626	670	7.4	7.4	6.4	6.4	6.9
1.51 or more	79 863	76 949	2 714	2 521	193	2.6	2.6	1.9	1.9	2.0
With all plumbing facilities	5 770 326	5 051 984	718 342	638 069	80 273	...	...	...	...	...
Owner occupied	2 753 514	2 168 276	584 238	512 951	71 287	100.0	100.0	100.0	100.0	100.0
1.00 or less	2 632 858	2 078 297	554 561	486 334	68 227	95.7	95.9	94.9	94.8	95.7
1.01 to 1.50	105 653	79 791	25 812	23 211	2 601	3.8	3.7	4.4	4.5	3.6
1.51 or more	14 053	10 188	3 865	3 406	459	0.5	0.5	0.7	0.7	0.6
Renter occupied	3 017 712	2 883 708	134 004	125 118	8 886	100.0	100.0	100.0	100.0	100.0
1.00 or less	2 717 364	2 593 781	123 583	115 447	8 136	90.0	89.9	92.2	92.3	91.6
1.01 to 1.50	226 732	218 381	8 351	7 753	598	7.5	7.6	6.2	6.2	6.7
1.51 or more	73 616	71 546	2 070	1 918	152	2.4	2.5	1.5	1.5	1.7

ble 34. **Financial Characteristics for the State: 1970**

(Data based on sample, see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

e State ban and Rural	The State			The State—Percent distribution		
	Total	Urban	Rural	Total	Urban	Rural
UE						
Specified owner occupied	1 983 996	1 576 812	404 184	100.0	100.0	100.0
...than $5,000	26 506	9 704	16 802	1.3	0.6	4.1
...to $7,499	54 010	26 852	27 158	2.7	1.7	6.7
...to $9,999	83 599	48 812	34 787	4.2	3.1	8.6
...to $12,499	128 197	83 964	44 233	6.5	5.3	10.9
...to $14,999	133 549	96 325	37 224	6.7	6.1	9.2
...to $17,499	175 106	132 360	42 746	8.8	8.4	10.5
...to $19,999	193 083	154 608	38 475	9.7	9.8	9.5
...to $24,999	379 915	315 977	63 938	19.2	20.0	15.7
...to $34,999	457 211	397 352	59 859	23.1	25.2	14.7
...to $49,999	230 929	204 591	26 338	11.6	13.0	6.5
...or more	120 891	106 267	14 624	6.1	6.7	3.6
...an	$22 600	$23 700	$17 500	...	...	...
Specified vacant for sale	14 821	8 517	6 304	100.0	100.0	100.0
...than $5,000	1 004	185	819	6.8	2.2	13.0
...to $9,999	2 098	775	1 323	14.2	9.1	21.0
...to $14,999	2 254	1 087	1 167	15.2	12.8	18.5
...to $19,999	2 211	1 458	753	14.9	17.1	11.9
...to $24,999	2 151	1 406	745	14.5	16.5	11.8
...to $34,999	2 434	1 713	721	16.4	20.1	11.4
...to $49,999	1 735	1 187	548	11.7	13.9	8.7
...or more	934	706	228	6.3	8.3	3.6
...ian price asked	$19 600	$22 700	$14 100	...	...	...
...all plumbing facilities:						
Specified owner occupied	1 958 842	1 565 899	392 943	100.0	100.0	100.0
...than $5,000	19 608	8 634	10 974	1.0	0.6	2.8
...to $9,999	131 235	74 053	57 182	6.7	4.7	14.6
...to $14,999	258 868	178 862	80 006	13.2	11.4	20.4
...to $19,999	365 963	285 236	80 727	18.7	18.2	20.5
...to $24,999	377 728	314 159	63 569	19.3	20.1	16.2
...or more	805 440	704 955	100 485	41.1	45.0	25.6
...an	$22 700	$23 800	$17 900	...	...	...
Specified vacant for sale	13 667	8 316	5 351	100.0	100.0	100.0
...than $5,000	451	117	334	3.3	1.4	6.2
...to $9,999	1 793	719	1 074	13.1	8.6	20.1
...to $14,999	2 106	1 068	1 038	15.4	12.8	19.4
...to $19,999	2 159	1 442	717	15.8	17.3	13.4
...to $24,999	2 108	1 390	718	15.4	16.7	13.4
...or more	5 050	3 580	1 470	37.0	43.0	27.5
...an price asked	$20 800	$22 900	$16 600	...	...	...
NTRACT RENT						
Specified renter occupied	3 091 086	2 966 996	124 090	100.0	100.0	100.0
...than $20	23 133	19 523	3 610	0.7	0.7	2.9
...to $39	55 537	51 181	4 356	1.8	1.7	3.5
...to $59	322 506	305 156	17 350	10.4	10.3	14.0
...to $79	624 150	600 958	23 192	20.2	20.3	18.7
...to $99	582 334	565 719	16 615	18.8	19.1	13.4
...to $119	380 691	367 234	13 457	12.3	12.4	10.8
...to $149	392 927	380 129	12 798	12.7	12.8	10.3
...to $199	375 959	366 534	9 425	12.2	12.4	7.6
...to $249	126 907	124 544	2 363	4.1	4.2	1.9
...or more	121 524	120 443	1 081	3.9	4.1	0.9
...ian rent	85 418	65 575	19 843	2.8	2.2	16.0
...ian	$96	$96	$84	...	...	...
Specified vacant for rent	93 644	83 621	10 023	100.0	100.0	100.0
...than $40	3 432	2 715	717	3.7	3.2	7.2
...to $59	12 554	10 935	1 619	13.4	13.1	16.2
...to $79	20 170	18 211	1 959	21.5	21.8	19.5	
...to $99	17 442	16 017	1 425	18.6	19.2	14.2
...to $149	20 493	17 936	2 557	21.9	21.4	25.5
...to $199	10 741	9 758	983	11.5	11.7	9.8
...or more	8 812	8 049	763	9.4	9.6	7.6
...ian rent asked	$90	$91	$88	...	...	...
...all plumbing facilities:						
Specified renter occupied	2 993 253	2 877 815	115 438	100.0	100.0	100.0
...than $40	64 641	59 122	5 519	2.2	2.1	4.8
...to $59	297 757	282 161	15 596	9.9	9.8	13.5
...to $79	600 904	578 721	22 183	20.1	20.1	19.2
...to $99	568 349	552 049	16 300	19.0	19.2	14.1
...to $149	761 200	735 215	25 985	25.4	25.5	22.5
...or more	619 933	607 177	12 756	20.7	21.1	11.1
...ian rent	80 469	63 370	17 099	2.7	2.2	14.8
...ian	$97	$97	$86	...	...	...
Specified vacant for rent	85 801	77 072	8 729	100.0	100.0	100.0
...than $40	2 288	1 824	464	2.7	2.4	5.3
...to $59	10 110	8 789	1 321	11.8	11.4	15.1
...to $79	18 006	16 330	1 676	21.0	21.2	19.2
...to $99	16 522	15 270	1 252	19.3	19.8	14.3
...to $149	19 596	17 229	2 367	22.8	22.4	27.1
...	19 279	17 630	1 649	22.5	22.9	18.9
...ian rent asked	$94	$94	$93	...	...	...
...RATION OF VACANCY						
...	22 545	14 129	8 416	100.0	100.0	100.0
...	6 255	4 538	1 497	27.0	32.5	17.9
...	7 224	4 740	2 484	32.1	33.8	29.3
...	9 215	4 751	4 455	40.9	33.7	52.9
...	95 [illegible]	83 820	11 252	[illegible]	100.0	[illegible]
...	[illegible]	48 [illegible]	3 [illegible]	[illegible]	57.6	31.5
...	[illegible]	30 [illegible]	3 [illegible]	[illegible]	35.8	27.1
...	15 [illegible]	13 153	4 431	[illegible]	15.7	39.4

Structural and Plumbing Characteristics for the State: 1970

[Data based on sample; see text. For meaning of symbols, see text]

The State
Inside and Outside Standard Metropolitan Statistical Areas
Urban and Rural, Rural Nonfarm, and Occupied Rural Farm

	The State	Inside SMSA's	Outside SMSA's	Urban	Rural		
					Total	Nonfarm	Occupied rural farm
All year-round housing units	6 159 314	5 344 803	814 511	5 323 904	835 410	750 603	84 807
UNITS IN STRUCTURE							
All year-round units	6 159 314	5 344 803	814 511	5 323 904	835 410	750 603	84 807
1, detached	2 344 292	1 786 692	557 590	1 675 074	669 218	596 256	72 962
1, attached	139 436	134 179	5 257	136 328	3 048	2 793	255
2	901 626	795 654	106 072	844 534	57 542	52 197	5 345
3 and 4	444 581	393 551	51 030	423 457	21 144	20 055	1 089
5 or more	2 251 839	2 200 720	51 119	2 232 356	19 473	19 473	-
Mobile home or trailer	77 540	34 557	43 003	12 565	64 985	59 829	5 156
Owner occupied	3 795 669	3 269 656	526 013	3 187 642	606 027	532 943	73 084
1, detached	2 033 874	1 593 685	440 189	1 529 523	504 351	457 660	66 691
1, attached	109 126	107 075	2 051	107 807	1 319	1 123	196
2	366 363	329 131	37 232	345 657	20 706	17 456	3 250
3 and 4	79 131	72 092	7 039	75 754	3 377	3 023	354
5 or more	139 987	137 698	2 289	138 492	1 495	1 495	-
Mobile home or trailer	67 188	29 973	37 215	10 409	56 779	52 186	4 593
Renter occupied	2 118 860	2 004 644	313 416	2 072 982	165 098	135 375	9 723
1, detached	258 359	145 733	62 596	134 175	74 154	67 893	6 261
1, attached	27 282	24 694	2 588	26 086	1 194	1 135	59
2	502 704	441 504	61 200	471 047	31 657	29 562	2 095
3 and 4	340 190	301 157	39 033	325 051	15 139	14 404	735
5 to 9	300 069	277 821	22 278	292 561	7 538	7 538	-
10 to 19	335 283	323 409	11 874	350 783	4 500	4 500	-
20 to 49	571 845	567 984	3 861	570 405	1 440	1 440	-
50 or more	821 976	817 778	4 198	820 716	1 260	1 260	-
Mobile home or trailer	10 372	4 584	5 788	2 156	8 216	7 643	573
Year-round vacant for rent	95 662	78 868	16 219	83 830	11 252	11 252	-
1	10 157	5 569	4 588	4 776	5 381	5 381	-
2 to 4	31 157	24 760	6 397	27 452	3 695	3 695	-
5 to 9	12 458	10 139	2 349	11 445	1 043	1 043	-
10 or more	41 280	38 395	2 885	40 147	1 133	1 133	-
YEAR STRUCTURE BUILT							
All year-round units	6 159 314	5 344 803	814 511	5 323 904	835 410	750 603	84 807
1969 to March 1970	101 470	79 662	21 808	70 675	30 794	29 288	1 506
1965 to 1968	376 815	316 711	60 104	289 552	86 963	82 207	4 756
1960 to 1964	553 864	492 951	60 913	467 358	86 526	81 649	4 877
1950 to 1959	1 043 366	937 844	105 522	903 660	139 686	130 932	8 754
1940 to 1949	659 769	609 507	50 262	598 617	61 262	56 928	4 334
1939 or earlier	3 424 030	2 908 128	515 902	2 995 851	430 179	369 599	60 580
Owner occupied	3 795 669	3 269 656	526 013	3 187 642	608 027	532 943	75 084
1969 to March 1970	50 903	37 508	13 395	28 529	22 375	20 945	1 430
1965 to 1968	215 835	173 113	42 722	145 341	70 494	66 134	4 360
1960 to 1964	294 627	249 771	44 856	225 857	68 770	64 329	4 445
1950 to 1959	661 934	580 909	81 025	551 648	110 286	102 337	7 949
1940 to 1949	273 272	240 347	32 925	232 169	41 140	37 478	3 662
1939 or earlier	1 299 098	988 011	311 087	1 004 159	294 937	241 804	53 133
Renter occupied	2 118 860	2 004 644	313 416	2 072 982	165 098	135 375	9 723
1965 to March 1970	181 707	165 673	16 034	168 679	15 058	12 586	442
1960 to 1964	243 019	232 071	10 948	232 448	10 571	10 139	432
1950 to 1959	354 523	338 803	15 720	337 882	16 641	15 636	805
1940 to 1949	360 731	350 764	9 967	350 278	10 453	9 854	599
1939 or earlier	1 978 100	1 817 353	160 747	1 883 695	94 405	86 960	7 445
COMPLETE BATHROOMS							
All year-round units	6 158 661	5 344 186	814 475	5 323 623	835 038	749 718	85 320
1	4 403 469	3 834 140	569 329	3 855 821	547 648	489 868	57 780
1 1/2	690 079	586 592	103 487	576 345	113 734	102 404	11 330
2	492 807	427 574	65 233	418 225	74 582	66 719	7 863
2 1/2	172 506	159 693	13 813	151 464	22 642	20 314	1 528
3 or more	127 945	116 251	11 594	112 246	15 699	14 280	1 419
None or also used by another household	270 855	219 836	51 019	209 522	61 333	55 915	5 418
Owner occupied	3 795 566	3 269 600	525 966	3 187 791	607 775	532 398	75 377
1	1 528 746	1 185 713	343 033	1 142 633	386 111	335 811	50 300
1 1/2	565 915	478 688	87 227	458 616	97 297	86 692	10 605
2	377 714	322 436	55 278	314 273	63 421	56 201	7 220
2 1/2	158 969	146 393	12 576	138 935	20 693	18 519	2 174
3 or more	109 035	99 922	9 113	96 640	12 965	11 674	1 291
None or also used by another household	55 187	36 448	18 739	27 949	27 898	23 451	4 447
Renter occupied	2 118 183	2 004 716	313 465	2 072 958	165 225	135 368	9 943
1	2 703 399	2 524 348	179 051	2 589 345	114 093	104 533	9 480
1 1/2	107 721	97 048	10 673	98 642	9 769	8 994	725
2 or more	128 581	119 977	8 604	119 913	8 643	7 876	767
None or also used by another household	178 482	163 345	15 137	165 424	12 858	11 897	971
BASEMENT							
Basement	5 522 331	4 834 215	688 116	4 855 [illegible]	[illegible]	[illegible]	74 633
Concrete slab	406 691	367 698	38 993	369 829	[illegible]	[illegible]	2 169
Other	230 292	142 890	87 402	[illegible]	[illegible]	[illegible]	8 005
SOURCE OF WATER							
Public system or private company	5 554 366	5 069 295	485 161	5 [illegible]	[illegible]	[illegible]	14 239
Individual well	550 154	257 277	292 877	83 [illegible]	[illegible]	[illegible]	62 395
Other	54 141	17 704	36 437	[illegible]	[illegible]	[illegible]	8 686
SEWAGE DISPOSAL							
Public sewer	4 874 525	4 458 460	346 065	4 [illegible]	[illegible]	[illegible]	2 965
Septic tank or cesspool	1 289 353	864 896	424 457	[illegible]	[illegible]	[illegible]	79 163
Other	44 883	20 830	24 053	[illegible]	[illegible]	[illegible]	3 192

Table 36. Equipment and Financial Characteristics for the State: 1970

(Data based on sample, see text. For maximum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

The State
Inside and Outside Standard Metropolitan Statistical Areas
Urban and Rural, Rural Nonfarm, and Occupied Rural Farm

	The State	Inside SMSA's	Outside SMSA's	Urban	Rural		
					Total	Nonfarm	Occupied farm
AIR CONDITIONING							
All year-round units	6 158 661	5 344 186	814 475	5 323 623	835 038	749 718	85 320
Room unit:							
1	1 070 733	1 019 381	71 407	1 023 634	67 154	61 859	5 295
2 or more	604 512	583 000	21 512	585 413	19 094	17 695	1 349
Central system	199 651	187 301	12 350	186 024	13 627	12 498	1 129
None	4 263 710	3 554 504	709 206	3 528 547	735 163	657 666	77 497
HEATING EQUIPMENT							
All year-round units	6 159 314	5 344 803	814 511	5 323 904	835 410	750 603	84 807
Steam or hot water	3 991 449	3 722 620	268 829	3 737 382	254 067	230 294	23 773
Warm-air furnace	1 604 045	1 222 614	381 431	1 194 550	409 495	364 686	44 809
Built-in electric units	87 695	67 755	19 940	63 255	24 440	22 401	2 039
Floor, wall, or pipeless furnace	91 517	68 854	22 663	66 947	24 570	22 124	2 446
Room heaters with flue	265 069	184 810	80 259	190 370	74 699	67 628	7 071
Room heaters without flue	58 676	45 426	13 250	45 674	12 982	11 694	1 288
Fireplaces, stoves, or portable heaters	49 051	26 378	22 673	20 583	28 462	25 188	3 274
None	11 812	6 346	5 466	5 117	6 695	6 588	107
Owner occupied	2 795 669	2 269 654	526 015	2 187 642	608 027	532 943	75 084
Steam or hot water	1 473 721	1 305 951	167 770	1 284 096	189 623	168 499	21 124
Warm-air furnace	1 095 205	816 195	279 010	770 806	324 399	284 092	40 307
Built-in electric units	34 354	21 996	12 358	17 961	16 393	14 567	1 826
Floor, wall, or pipeless furnace	50 724	35 923	14 801	34 056	16 668	14 585	2 083
Room heaters with flue	102 708	65 600	37 108	60 687	42 021	36 234	5 787
Room heaters without flue	20 089	13 627	6 462	12 975	7 114	6 044	1 070
Fireplaces, stoves, or portable heaters	17 995	9 673	8 322	6 448	11 547	8 744	2 803
None	873	689	184	611	262	178	84
Renter occupied	3 118 080	2 904 666	213 416	2 972 982	145 098	135 375	9 723
Steam or hot water	2 388 087	2 307 614	80 473	2 343 514	44 573	41 924	2 649
Warm-air furnace	449 081	369 908	79 173	389 295	59 786	55 284	4 502
Built-in electric units	47 256	42 151	5 105	42 383	4 873	4 660	213
Floor, wall, or pipeless furnace	36 757	30 857	5 900	31 245	5 512	5 149	363
Room heaters with flue	142 727	109 476	33 251	120 698	22 029	20 745	1 284
Room heaters without flue	34 595	29 559	5 036	30 676	3 909	3 691	218
Fireplaces, stoves, or portable heaters	17 173	12 826	4 347	12 890	4 283	3 812	471
None	2 414	2 273	141	2 281	133	110	23
AUTOMOBILES AVAILABLE							
All occupied units	5 913 749	5 174 318	739 431	5 160 749	753 000	667 680	85 320
1	2 583 549	2 170 458	413 091	2 173 667	409 882	361 701	48 181
2	1 098 169	904 280	193 889	853 562	244 607	218 452	26 155
3 or more	170 462	142 048	28 414	130 984	39 478	33 858	5 620
None	2 061 569	1 957 532	104 037	2 002 536	59 033	53 669	5 364
YEAR MOVED INTO UNIT							
Owner occupied	2 795 566	2 269 600	525 966	2 187 791	607 775	532 398	75 377
1969 to March 1970	221 625	172 676	48 949	158 694	63 131	58 449	4 682
1968	180 774	146 300	34 474	134 730	46 044	42 386	3 658
1967	152 254	123 769	28 485	114 828	37 426	34 211	3 215
1965 and 1966	296 804	243 398	53 408	229 394	67 410	61 514	5 896
1960 to 1964	538 522	449 086	89 436	429 158	109 364	98 407	10 957
1950 to 1959	773 785	652 825	120 960	634 750	139 035	122 521	16 514
1949 or earlier	631 802	481 548	150 254	486 437	145 365	114 910	30 455
Renter occupied	3 118 183	2 904 718	213 465	2 972 938	145 225	135 282	9 943
1969 to March 1970	668 211	607 493	80 718	633 396	54 815	52 192	2 623
1968	379 048	349 156	29 892	357 928	21 120	19 974	1 146
1967	287 401	268 408	18 993	275 026	12 375	11 522	853
1965 and 1966	446 689	422 442	24 247	430 245	16 441	15 328	1 113
1960 to 1964	535 256	509 625	25 631	518 919	16 337	15 182	1 155
1950 to 1959	398 353	380 616	17 737	386 207	12 146	11 111	1 035
1949 or earlier	383 225	366 978	16 247	371 234	11 991	9 973	2 018
GROSS RENT							
Specified renter occupied	3 091 086	2 890 796	200 290	2 966 996	124 090	...	...
Less than $30	6 245	5 194	1 051	5 572	673	...	...
$30 to $39	20 304	18 068	2 236	19 227	1 077	...	...
$40 to $49	48 663	42 338	6 325	46 193	2 470	...	...
$50 to $59	94 351	85 683	8 668	90 722	3 629	...	...
$60 to $69	181 357	165 527	15 830	175 007	6 350	...	...
$70 to $79	253 651	235 313	18 339	245 666	7 985	...	...
$80 to $89	613 312	572 444	40 868	593 827	19 485	...	...
$90 to $99	508 237	475 967	32 270	489 545	18 692	...	...
$100 to $119	467 774	439 146	28 628	467 436	20 338	...	...
$120 to $149	476 911	456 154	19 757	459 051	16 860	...	...
$150 or more	169 412	164 873	4 539	164 861	4 551	...	...
No cash rent	69 [illegible]	67 434	1 234	67 307	1 361	...	...
Median rent	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	...	...
Median gross rent	95 418	77 219	564	77 007	776	...	...
Median contract rent	$111	65 436	19 982	65 575	19 843	...	...
		$ [illegible]	$98	$111	$111	...	...
UNITS ASSESSED							
[illegible]	93 264	73 361	15 233	93 621	13 623	...	...
[illegible]	$[illegible]	$23	$[illegible]	$[illegible]	$[illegible]	...	...
[illegible]	$[illegible]	$[illegible]	$77	$[illegible]	$[illegible]	...	...

"Conclusions" From *Survey Report on Rental Housing*—New York, 1969, Plaintiffs' Exhibit "C".

(See opposite ☞)

CONCLUSIONS

This survey shows that there is still an acute shortage of rental housing in representative areas of New York State subject to rent control.

The survey covered eight municipalities - four in Nassau, two in Westchester and two in Erie Counties. The figures below illustrate the shortages of rental housing in municipalities surveyed in these counties.

Rental Vacancy Rates, by Municipality	
Cedarhurst	1.1%
East Rockaway	0.8
Floral Park	0.8
Great Neck Plaza	0.7
Buffalo [a/]	1.8
Cheektowaga [a/]	1.4
Mount Pleasant	2.8
New Rochelle	0.4

What factors lie behind this tight rental housing supply? Foremost, obviously, has been a lag in new construction relative to the need. In addition, there have been extensive demolitions, many of them caused by urban renewal projects, highway construction and other public improvements.

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a/ For purposes of comparison, a Postal Vacancy Survey (July 1968) obtained rental vacancy rates of 1.1 percent for Buffalo and 1.4 percent in Cheektowaga. An annual occupancy survey conducted by FHA came up with a 1.6 percent rental vacancy rate for Buffalo for the same period.

Also contributing to the attrition were fires and conversions to non-residential usage. Some units were permitted to decay to an extent where they became unfit for habitation. Each of these factors helped to decrease the supply of housing. At the same time, increased demand resulted from new household formations and in-migration.

"Welfare Housing" From *The Urban Housing Dilemma*, New York City, Plaintiffs' Exhibit "D".

WELFARE HOUSING

Introduction

The significance of providing housing for welfare recipients is self-evident in a city where one out of every eight residents is "on welfare." The following material analyzes the specifics of the welfare housing market. First the types and condition of housing presently offered welfare recipients are considered, then the characteristics and the attitudes of their landlords, financing problems, and, finally, "welfare" housing operations.

The sources for the data used on welfare housing are the landlord interviews. Owners were asked if they had any tenants on welfare in the sample structure and in what proportion. Spot checks of the reliability of the owners' reports were conducted with the help of the Human Resources Administration. In general, they were quite accurate.

A more intensive analysis of this area is being prepared as part of a study being conducted with the cooperation of the Housing Development Administration, the Human Resources Administration, and the Ford Foundation.

Plaintiffs' Exhibit D, "Welfare Housing" From The Urban Housing Dilemma, New York City.

CONDITION OF HOUSING

Exhibit 1 indicates the skew in distribution of welfare tenantry by building characteristics. Seventy-five percent or more of the Post 1929 structures have no welfare tenantry. This contrasts with a minority of the Old Law and intermediate sized New Law structures which are similarly tenanted.

More than one of five of the Old Law and intermediate sized New Law structures have 20 percent or more of their tenants on welfare. This points up the concentration of welfare recipients in the poorer rent controlled housing.

It is difficult to disentangle the effects of availability of housing, segregation, discrimination against not only ethnic minorities but also welfare recipients, and absolute rent levels. *Regardless of the several inputs into the mix, there is no question of the concentration of the welfare tenantry in the City's oldest and poorest categories of housing.*

In a structured probability sample of welfare recipients conducted in 1966 in New York City,[1] only 11 percent of the welfare families lived in public housing. About one-third of the welfare mothers in this study reported that

[1] Lawrence Podell, *Families on Welfare in New York City*, preliminary report #2, City University of New York, N.Y. 1967.

Exhibit 1, Welfare.

(See opposite [illegible])

Exhibit 1 - Welfare

WELFARE TENANTRY BY BUILDING CATEGORY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968
(NUMBERS OF STRUCTURES IS IN HUNDREDS)

Welfare Tenantry	All Structures	Old Law Structures		New Law Structures			Structures Built After 1929		Small Structures
		5 - 19 Units	20 Units or More	5 - 19 Units	20-49 Units	50 Units or More	10-49 Units	50 Units or More	3 and 4 Units
Total	529	133	18	119	97	24	7	11	119
None	259	58	6	67	25	12	6	8	78
A Few (Less than 10%)	44	11	3	7	15	6	1	2	0
10% Plus to 20%	40	11	2	10	16	1	*	0	0
20% Plus to 50%	88	19	2	21	23	2	*	*	21
Over 50%	38	13	2	5	8	1	0	0	10
Some - No Breakdown	41	16	3	8	10	2	*	0	3
NA/DK	19	6	1	1	2	1	*	1	7
	P E R C E N T D I S T R I B U T I O N								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
None	48.9	43.5	33.3	56.0	25.3	48.5	79.5	75.0	65.3
A Few (Less than 10%)	8.3	8.2	18.9	5.5	15.2	23.7	9.1	18.5	0.0
10% Plus to 20%	7.5	8.2	8.9	8.8	16.2	4.1	1.1	0.0	0.0
20% Plus to 50%	16.6	14.1	8.9	17.6	23.2	9.3	2.3	1.1	18.1
Over 50%	7.1	9.4	8.9	4.4	8.1	2.1	0.0	0.0	8.3
Some - No Breakdown	7.8	11.8	15.6	6.6	10.1	7.2	2.3	0.0	2.8
NA/DK	3.7	4.7	5.6	1.1	2.0	5.2	5.7	5.4	5.6

*LESS THAN 50
NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey; Rent Controlled Structures Only.

"there were rats in their buildings"; garbage was found in the hallways of the buildings in similar proportions. Forty-six percent of the families on welfare lived in housing with poorly lit hallways.

The problems of providing housing accommodations for welfare recipients are accentuated, particularly in the cases of ADC families, by the large size of the families. Two-thirds of the families had three or more children. As a result, many welfare recipients are overcrowded. Fifteen percent of the households had two or more people per room and an additional 17 percent had from one and one-half to 1.99 persons per room.

This is further complicated by the rent levels. Only a quarter of the welfare families pay between $80 and $100, with an additional fifth paying over $100 per month. What do they receive for their rent payments?

Exhibit 2 clearly indicates a correlation between welfare tenancy and poor housing conditions. *Over fifty percent of the structures in the lowest interior maintenance category have a high proportion of welfare tenants.* Conversely, nearly 90 percent of the top category of maintenance graded buildings have either none or a few—less than 10 percent—welfare recipients as tenants.

Exhibit 2—Welfare.

(See opposite ☞)

-SHS-

CONDITION OF STRUCTURES BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968
(NUMBER OF STRUCTURES IS IN HUNDREDS)

Exhibit 2 - Welfare

Degree of Welfare Tenantry	All Structures	NUMBER OF STRUCTURES BY INTERIOR MAINTENANCE SCALE 1-59	60-75	76-89	90-100
Total	524	93	201	173	57
None	255	14	86	112	44
A Few (Less than 10%)	44	4	20	14	7
10 - 20%	40	6	15	17	2
20 Plus - 50%	88	34	37	16	1
Over 50%	36	19	17	*	0
Some - No Breakdown	41	9	21	9	3
NA/DK	19	8	7	4	1
		P E R C E N T D I S T R I B U T I O N			
Total	100.0	100.0	100.0	100.0	100.0
None	48.7	14.6	42.5	64.8	77.4
A Few (Less than 10%)	8.4	4.4	9.7	7.9	11.9
10 - 20%	7.6	6.3	7.3	10.1	3.4
20 Plus - 50%	16.8	36.3	18.6	9.2	1.7
Over 50%	6.9	20.6	8.3	0.1	0.0
Some - No Breakdown	7.9	9.5	10.2	5.5	4.5
NA/DK	3.7	8.4	3.4	2.4	1.1

*LESS THAN 50
NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

This exhibit also appears in the chapter on Maintenance as Exhibit 29.

Source: Landlord Survey; Rent Controlled Structures Only.

"Welfare Housing" From The Urban Housing Dilemma.

When the owners were unequivocally asked, "Is your building in good condition?", nearly three-fourths of those with no welfare recipients said unequivocally "yes," while only 52.6 percent of those with half or more welfare recipient tenants were similarly positive. (See Exhibit 3.)

Violations—Three-fourths of the structures with over 50 percent welfare recipients had five or more violations. The same is true for 45.1 percent of the 20-50 percent welfare tenanted buildings. This contrasts sharply with equivalent data for structures with no welfare tenants where the incidence of 5 or more violations is 22.2 percent. Since welfare workers are required to try to place their clients only in violation-free structures, it is apparent that the relatively tight market cannot provide alternative, violation-free, accommodations for people on welfare (See Exhibit 4.)

Are these buildings violation-free before they have welfare tenantry, or are the buildings open to welfare tenants because they *do* have violations and are unacceptable to other tenants? Much more intensive research is required before these pertinent questions can be answered. In any case, to the extent that violations are linked with poorly maintained buildings, most welfare recipients live in badly maintained housing.

Exhibit 3, Welfare.

(See opposite ☞)

Exhibit 3 - Welfare

"IS YOUR BUILDING IN GOOD CONDITION?" BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Building in Good Condition?	All Structures	NUMBER OF BUILDINGS BY DEGREE OF WELFARE TENANTRY					
		None	Less Than 10%	10-20%	20 Plus-50%	Over 50%	Some - No Breakdown	NA/DK
Total	529	259	44	40	88	38	41	19
Yes	369	191	32	31	56	20	22	17
No	62	27	4	3	12	7	10	*
Equivocation	51	17	8	4	11	8	4	*
Fair	40	22	*	3	9	2	4	1
NA/DK	7	2	0	0	0	2	2	1
		PERCENT DISTRIBUTION						
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Yes	69.8	73.8	73.6	77.7	63.7	52.6	53.6	88.5
No	11.7	10.3	8.6	6.4	13.9	18.5	23.1	1.4
Equivocation	9.6	6.4	17.4	10.2	12.5	20.4	8.6	1.0
Fair	7.5	8.6	0.5	5.7	10.0	4.2	10.0	2.6
NA/DK	1.3	0.9	0.0	0.0	0.0	4.4	4.8	6.5

*LESS THAN 50

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey: Rent Controlled Structures Only.

THE "WELFARE" LANDLORD

Who are the "welfare' landlords? Is there a significant skew in the distribution of owner characteristics as the proportion of welfare tenantry rises?

Minority Group Owners—As noted in Chapter 13 minority group owners have most of their holdings in the oldest, smallest, and least expensive apartment facilities where, as we have seen, welfare recipients are housed. Exhibit 5 clearly illustrates this. Notice the increase in minority group ownership as the proportion of welfare recipient tenantry goes up.

Only a quarter of the Spanish-speaking owned buildings reported no welfare tenantry, as contrasted with more than half the white non-Spanish and Negro owned buildings. The majority of the Spanish-speaking owners have parcels with over 20 percent of the tenants on welfare. Over a fifth of the buildings which have over 50 percent welfare tenants have Spanish-speaking owners. Minority group owners, therefore, are housing a substantial proportion of the heavily welfare tenanted buildings.[2]

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[2] The size of sample for minority group landlords is very small (18 Spanish-speaking, 40 Negro). These findings, therefore, are more suggestive than definitive.

Exhibit 3, Welfare.

(See opposite ☞)

ETHNICITY OF OWNER BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STPUCTURES) NEW YORK CITY, 1968

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Degree of Welfare Tenantry	All Structures	ETHNICITY OF OWNER White Non-Spanish	Spanish Speaking	Negro	No Answer Do Not Know
Total	529	435	24	56	14
None	259	219	6	28	5
A Few (Less than 10%)	44	39	2	4	*
10 - 20%	40	39	0	0	1
20 Plus - 50%	88	62	8	15	3
Over 50%	38	28	8	2	0
Some - No Breakdown	41	34	0	5	3
NA/DK	19	15	0	3	2
P E R C E N T D I S T R I B U T I O N					
Total	100.0	100.0	100.0	100.0	100.0
None	48.9	50.3	25.2	50.3	40.1
A Few (Less than 10%)	8.3	8.9	6.7	6.3	2.4
10 - 20%	7.5	9.0	0.0	0.0	4.4
20 Plus - 50%	16.6	14.2	34.1	27.0	21.0
Over 50%	7.1	6.4	34.1	3.1	0.0
Some - No Breakdown	7.8	7.7	0.0	8.6	20.5
NA/DK	3.7	3.5	0.0	4.7	11.5

*LESS THAN 50

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey; Rent Controlled Structures Only.

NUMBER OF VIOLATIONS BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968
(NUMBER OF STRUCTURES IS IN HUNDREDS)

Welfare Tenantry	All Structures	NUMBER OF VIOLATIONS None	1 to 4	5 and Over
Total	529	183	166	180
None	259	102	99	57
A Few (Less than 10%)	44	16	12	17
10 - 20%	40	14	12	14
20 Plus - 50%	88	23	25	40
Over 50%	37	6	4	28
Some - No Breakdown	41	12	10	19
NA/DK	19	9	5	5
P E R C E N T D I S T R I B U T I O N				
Total	100.0	34.6	31.4	34.0
None	100.0	39.6	38.3	22.2
A Few (Less than 10%)	100.0	35.5	26.3	38.2
10 - 20%	100.0	35.7	29.5	34.8
20 Plus - 50%	100.0	26.1	28.8	45.1
Over 50%	100.0	15.5	9.4	75.1
Some - No Breakdown	100.0	30.1	23.5	46.4
NA/DK	100.0	48.5	28.1	23.4

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Special Listing of the Master Building File, August, 1967; Landlord Survey; Rent Controlled Structures Only.

"Welfare Housing" From The Urban Housing Dilemma.

Resident Landlords—Landlords occupy buildings that are heavily welfare tenanted less frequently than they do buildings with no welfare. In the sample as a whole, for example, in buildings with 20 percent or more welfare, landlords are present in approximately one out of six cases. This skew in distribution between welfare and no welfare resident landlords, is largely a function of the relatively small three- and four-unit buildings which have no welfare tenants. For larger parcels the degree of resident ownership is roughly the same regardless of welfare tenantry. (For more data on this point see Chapter 13.)

The Degree of Owner Involvement in the Real Estate Market—If responses are tabulated by the propostion of welfare tenantry in the structure, there is little variation in the amount of income received from real estate. Similarly, there is little variation in the degree of owner involvement as gauged by the amount of time devoted to real estate holdings or in size of holdings.

The Financing of "Welfare" Buildings

As more fully detailed in Chapter 11, *Financing,* funds available for repairs, and cash flow strains on structures are chiefly a function of their financing. In this context, then, the data in Exhibit 6 are highly significant.

Exhibit 6, Welfare.

(See opposite ☞)

Exhibit 8 - Welfare

"WHEN YOU BOUGHT THIS PARCEL WAS ADEQUATE INSTITUTIONAL FINANCING AVAILABLE?"
BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968
(NUMBER OF STRUCTURES IS IN HUNDREDS)

Landlords Response	All Structures	DEGREE OF WELFARE TENANTRY						
		None	Less Than 10%	10-20%	20 Plus-50%	Over 50%	Some - No Breakdown	NA/DK
Total	529	259	44	40	88	38	41	19
Yes	376	197	33	27	61	18	28	12
Partly-Had to be supplemented	9	4	2	1	2	0	0	0
No-Substantially purchase money	32	14	*	4	9	5	*	0
No	55	18	5	4	12	9	6	2
NA/DK	57	26	3	4	4	6	8	6
P E R C E N T D I S T R I B U T I O N								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Yes	71.1	76.3	75.7	68.2	69.6	46.7	67.3	59.4
Partly-Had to be supplemented	1.6	1.5	5.2	2.5	1.9	0.0	0.0	0.0
No-Substantially purchase money	6.0	5.5	1.0	8.9	10.0	12.2	1.0	0.0
No	10.4	6.8	10.6	9.5	14.2	24.9	13.3	9.4
NA/DK	10.8	10.0	7.6	11.0	4.3	16.2	18.5	31.2

*LESS THAN 50

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

"Welfare Housing" From The Urban Housing Dilemma.

The positive correlation between the weakness of the institutional financing pattern and the proportion of welfare tenantry is obvious. Only 12.3 percent of the non-welfare buildings had no institutional financing at the time of purchase, or required substantial purchase money. By contrast, the proportion responding similarly in those buildings with over 50 percent welfare is triple, at the 37.1 percent mark.

Purchase money mortgages tend to be shorter term, commonly involving much higher actual interest rates, and are typically self-liquidating. They, therefore, exercise a deleterious effect on the economics and operations of structures in which they are common. To the extent that this is the type of financing available for "welfare" buildings, it is obvious that these same buildings will have a much harder time in terms of cash flow requirements than those buildings whose owners have access to institutional financing.

The response to the question detailed above was paralleled and emphasized when owners were asked if they could get a mortgage presently. Less than 45 percent of those with no welfare tenantry said that they could obtain institutional financing. (Exhibit 7.) Only one-fourth of those buildings with 20 to 50 percent welfare tenantry gave a similar response, and the proportion was reduced to 17.1 percent for those with over 50 percent welfare tenants.

"If Selling Now, Would It Be Possible to Get a Mortgage From a Lending Institution".

(See opposite ☞)

"IF SELLING NOW, WOULD IT BE POSSIBLE TO GET A MORTGAGE FROM A LENDING INSTITUTION?"
BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Landlords Response	All Structures	DEGREE OF WELFARE TENANTRY						
		None	Less Than 10%	10-20%	20 Plus-50%	Over 50%	Some -- No Breadkown	NA/DK
Total	529	259	44	40	88	38	41	19
Yes	184	115	17	12	22	6	7	5
No	252	97	20	22	56	25	23	9
NA/DK	94	47	7	6	10	6	12	6
P E R C E N T D I S T R I B U T I O N								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Yes	34.7	44.3	38.5	28.9	25.5	17.1	16.0	26.0
No	47.6	37.4	46.4	55.6	63.6	66.5	54.6	44.6
NA/DK	17.7	18.2	15.0	15.4	10.9	16.4	29.4	29.4

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey: Rent Controlled Structures Only.

This suggests that the welfare building owner is driven to essentially playing end game. He cannot get out of a parcel since he cannot get financing for an appropriate sale. Under these circumstances, the owner's level of maintenance and capital input will probably be quite limited.

The factors that enter into the mortgagability of a parcel are complex. As Chapter 11, *Finance* details, the location of the structure, its age and physical configuration, and a host of other elements are significant. Few of the nearly 100 mortgage officers interviewed in this survey made specific reference to welfare. In general, however, when these comments were forthcoming, they were specifically negative. The attitude was epitomized by the president of a major savings and loan, when discussing a mortgage held by his institution in the East New York area of Brooklyn. "The trend indicates no further extension (of the mortgage) even though the building is in fair condition; the neighborhood is not really too good. Welfare occupancy has hurt its value." The attitude expressed by this lender may be unfair, but it was common among the entrepreneurs and lenders in the survey when welfare tenancy was mentioned.

When landlords were asked whether they had any welfare tenantry, a frequent response among owners of well cared for buildings was "No! I won't take any in the building." Whether correct or not, there seems to be a strong feeling on the part of the landlords that taking in welfare tenants marks the beginning of the deterioration of the building.

The possibility of this being a self-fulfilling prophecy is evident—the landlord is sure that welfare tenants bring on the ruin of a building, and therefore, with their entrance, does not maintain the building. The potential of this fore-

cast needs little elaboration here, but it has obvious significance.

> Interestingly enough, this is not confined simply to rent controlled parcels. For example, Parcel No. 7211001 is an eight-family, brick, four-story walk-up which was radically altered and thus decontrolled. It is located in the border ground between the Williamsburg and the Bedford Stuyvesant areas of Brooklyn. The eight apartments located within its 5,340 square feet have a total rent roll, when fully occupied, of $8,448. Six of the eight households are black, more than half are on welfare. The owner, a major holder and operator of real estate with nearly 40 buildings, all in Brooklyn, claims that he would like to sell the building but no one would buy it.
>
> The owner secured the building in lieu of foreclosure in May 1967. His attitude toward improvements and the like are as negative as any rent controlled owner's. When asked if he would be able to get a mortgage on a sale, the response was "No, absolutely impossible because of the deterioration of the area." He also pointed to the necessity for him to house welfare recipients as "the only people who want to live here."

It is interesting to note that in the same neighborhood there is an eight-family, brick, similar rent controlled building with an assessment within dollars of the non-controlled building. The owner-resident in this all white, non-welfare tenanted building has a bank mortgage and felt confident that he could get a larger one, if necessary, on resale.

The maximum rent on the latter structure with its 8,608 square feet of building area was only $7,500 a year. Obviously, the negative variable in the non-controlled case

could not have been rent control, except perhaps as rent control keeps rents artifically low in the area generally. The essential variables seem to be tenant ethnicity, welfare, and owner residence. In the controlled case, the owner resident bought the building partly for income, but mostly as a home. In the non-controlled case, the latter motivation and supervision were missing.

For the least desirable buildings, however, welfare tenantry is essential. As detailed in Chapter 12, *Tax Delinquency and Vacant Buildings,* the ability to secure welfare tenants frequently has a life and death effect on the operations of a building. For example, in one case in the East New York area of Brooklyn, a building was abandoned by its owners. They made the decision not to repair after a fire, partly because of an estimated six-to eight-month gap between repairing the building and removing the rent reductions. In addition, "as long as the building had violation restrictions on it after repairs were made, no welfare tenants could be put in the building and welfare tenants are the main source of income in this area." Obviously, this illustrates the existence of a distinct welfare market.

Adequacy of Welfare Allowances for Shelter

At the time of this study current standards for welfare shelter allowances are affected by the scarcity of housing. The nominal limits were as follows for unfurnished units with private kitchen, toilet facilities and central heat: welfare rent allowances for one person go up to $100 a month; for two or othree persons, $110 a month; four or five persons, $135 a month; for six persons, $150 a month; for seven or eight persons, $160 a month; for nine persons and over, $185 monthly. Payments over this are paid only with permission of the administrative supervisor.

While there is no stipulation as to the number of rooms, the *Handbook for Case Units and Public Assistance of the City of New York, Department of Social Services,* as of the time of the study, states, "the adequacy of the living arrangements in terms of the number of rooms and persons in the household should be carefully considered and discussed with housing advisors when there is a question as to adequacy. A similar recommendation applies to accommodations without central heat, where the rents are usually $25 a month less.

In a number of cases, landlords, when asked about potential rent increases, replied that the ceiling was not rent control, but how much welfare would pay. The high rate of tenant turnover in welfare structures had made the rent control ceilings much less confining than the willingness of the welfare administration to pay high rents. Several owners of slum properties noted that welfare authorities now avoid placing tenants in some of the hard core slum areas. In one case, for example, an owner complained that the welfare agency in the Bronx no longer recommended clients to his neighborhood; i.e., the South Bronx.

Similarly, one landlord of a 20-family house in the Bedford-Stuyvesant area has 18 of his units occupied by welfare clients (Parcel 121001). When pointing to a large number of his units renting for less than the maximum legal rent, he said, "Welfare will only pay $105 for four rooms." Since he has had a very high turnover, his ceilings are well above this. The same landlord pointed to rent increases received through turnover as a reason for not putting in additional services. "I don't bother with additional services since there is such a large turnover because I have welfare tenancy."

His average rental for four-room units was more than $100 a month. He stated further that "My building is decontrolled due to the constant turnover from welfare tenants and the 15 percent lease increases." The Negro owner added that if there were no rent control he'd raise the rents even further, get rid of his welfare tenants, and straighten up the building in such a fashion as to attract other tenants whom he feels he could get profitably.

Vigor of Rentals as a Function of Welfare Tenantry

When landlords' responses to the question of whether it was harder or easier to rent are cross tabulated by the degree of welfare tenantry (see Exhibit 8), there is a clearcut correlation between the amount of welfare tenantry and the degree of affirmative responses to "getting harder to rent." The proportion among those who have no welfare tenants who said it was harder to rent was 17 percent. This goes up to 37 percent of those owners who have from a fifth to a half of their tenantry in welfare households, and 38.7 percent for those over the 50 percent level.

Exhibit 8, Welfare.

(See opposite ☞)

BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Exhibit 8 - Welfare

Landlords Response	All Structures	DEGREE OF WELFARE TENANTRY: None	Less Than 10%	10-20%	20 Plus-50%	Over 50%	Some - No Breakdown	NA/DK
Total	529	259	44	40	88	38	41	19
No Change	245	136	25	16	32	15	16	5
Harder	126	44	10	9	33	15	12	6
Easier	116	58	9	8	18	8	9	6
No Change but poorer tenantry	23	10	*	5	2	0	5	1
NA/DK	18	10	1	3	4	0	0	1
PERCENT DISTRIBUTION								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
No Change	46.3	52.7	56.3	40.0	36.1	39.6	38.8	27.1
Harder	23.9	17.0	21.9	21.4	37.0	38.7	27.8	29.3
Easier	21.9	22.5	19.5	19.9	20.0	21.8	21.8	31.3
No Change but poorer tenantry	4.4	3.8	1.0	12.2	2.4	0.0	11.6	6.8
NA/DK	3.5	4.0	1.2	6.6	4.5	0.0	0.0	5.5

*LESS THAN 50

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

When owners were asked whether they could get more for *all* of their apartments without exception, and the answers were tabulated by welfare tenantry, there was little variation in the response. The weakest market indications came from those buildings with 20-50 percent welfare occupancy. The reasons given by the owners were typically those of apartment configuration, particularly that the apartments were inappropriate to the new market. Examination of the questionnaires indicated that they referred to apartments which were quite small and located in areas of ethnic shift where the premium was on large size units. (See Exhibit 9.)[3]

Welfare and Segregated Structures

It is clear from Exhibit 10 that buildings which were heavily welfare tenanted tend to be segregated. While only 6.8 percent of all white tenanted buildings had over 20 percent welfare recipients, 37.3 percent of all Negro buildings, 59.2 percent of all Spanish, 49.5 percent of the mostly Negro tenanted buildings, and 48.0 percent of the mostly Spanish occupied buildings were so tenanted.

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[3] The absolute negative response to the projective question, "in your neighborhood" is probably more trustworthy than a question on the owner's specific building.

Exhibit 9, Welfare.

(See opposite ☞)

COPY BOUND CLOSE IN CENTER

"COULD YOU GET MORE FOR ALL YOUR APARTMENTS?"
BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968
(NUMBER OF STRUCTURES IS IN HUNDREDS)

Exhibit 9 - Welfare

Landlords Response	All Structures	DEGREE OF WELFARE TENANTRY: None	Less Than 10%	10-20%	20 Plus-50%	Over 50%	Some - No Breakdown	NA/DK
Total	502	244	43	37	84	36	40	18
More without exception	378	188	31	31	57	31	25	15
Exception - Location	7	5	*	*	2	*	*	0
Apartment Configuration	20	5	1	1	7	1	4	0
Building Configuration	23	9	1	1	6	1	4	0
Apartments already at market value	62	29	8	4	11	2	5	4
Tenants can't afford to pay	1	0	0	0	1	0	0	0
NA/DK	11	7	2	0	*	0	1	*
PERCENT DISTRIBUTION								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
More without exception	75.2	77.2	72.0	83.2	67.8	86.8	62.2	79.7
Exception - Location	1.5	2.0	0.3	0.5	1.9	1.2	0.6	0.0
Apartment Configuration	4.0	2.2	3.3	2.7	8.2	3.3	10.9	0.0
Building Configuration	4.6	3.9	1.3	3.2	7.7	3.3	10.3	0.0
Apartments already at market value	12.4	11.7	19.0	10.4	13.0	5.4	12.5	19.6
Tenants can't afford to pay	0.2	0.0	0.0	0.0	1.2	0.0	0.0	0.0
NA/DK	2.2	3.0	4.0	0.0	0.2	0.0	3.6	0.7

*LESS THAN 50
NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey; Rent Controlled Structures Only.

Exhibit 10, Welfare.

(See opposite ☞)

Exhibit 10 - Welfare

ETHNICITY OF TENANTS BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Degree of Welfare Tenantry	All Structures	ETHNICITY OF TENANTS: All White	All Negro	All Spanish	Subst. Negro (Bal. Mixed)	Subst. White (Bal. Mixed)	Subst. Spanish (Bal. Mixed)	Mixed Spanish (Other White)	All Three Mixed	No Answer Do Not Know
Total	529	205	82	37	38	34	30	45	39	19
None	259	155	29	7	10	17	5	13	16	6
A Few (Less than 10%)	44	13	4	2	3	6	3	6	2	4
10 - 20%	40	13	4	3	1	3	5	3	8	0
20 Plus - 50%	88	13	21	8	13	2	12	11	5	3
Over 50%	38	1	9	14	5	2	2	3	1	0
Some - No Breakdown	41	7	10	4	4	4	2	5	4	2
NA/DK	19	1	4	0	1	*	2	4	3	5
		PERCENT DISTRIBUTION								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
None	48.9	76.0	35.3	18.1	27.2	50.0	15.2	29.6	40.5	33.8
A Few (Less than 10%)	8.3	6.5	5.5	5.4	7.8	18.5	9.7	14.0	5.6	18.4
10 - 20%	7.5	6.6	4.5	7.9	2.8	9.9	16.0	6.4	10.5	0.0
20 Plus - 50%	16.6	6.2	25.8	21.5	35.4	4.8	40.7	23.5	13.5	15.8
Over 50%	7.1	0.6	11.5	37.7	14.1	4.8	7.3	6.5	1.7	0.0
Some - No Breakdown	7.8	3.3	12.3	9.5	11.4	10.7	5.5	12.0	11.2	8.2
NA/DK	3.7	0.7	5.1	0.0	1.3	1.3	5.6	7.8	8.1	23.8

*LESS THAN 50

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey; Rent Controlled Structures Only.

"Welfare Housing" From The Urban Housing Dilemma.

The impact of twice minority status, both in terms of ethnicity and in terms of welfare status, compounded by substantial segregation within one physical structure, is beyond the scope of this study. It certainly deserves much more analysis and action on the part of municipal authorities.

Some Operational Aspects of Welfare Structures

It is difficult to separate the impact of ethnic shift and welfare shift. To some owners they are synonymous. One owner of an all white building in the Fort Hamilton Park area of Brooklyn contrasted her lot (with white stable tenantry, and, therefore, no lease turnover) and that of some of her neighbors who were beginning to take in minority groups as well as welfare recipients. Although the high turnover of welfare tenants would increase her revenues, when asked why she didn't make the tenant shift, she looked shocked and said, "They will ruin the building."

Welfare and the problem of Non-Payment of Rent

A frequent criticism voiced by a number of owners in the sample was that the Welfare Department didn't take adequate responsibility for the payment of rent by welfare tenants. Welfare payments are made twice monthly, rents typically are collected once a month; the strain on budgeting is clear. The department has tried to minimize the use of two party checks; i.e., made out jointly to the tenant and the landlord. This reason was cited by a number of landlords as basic in refusing to accept welfare tenants.

The problem of the landlord in hard core slum areas with welfare tenantry is illustrated in the example of a frame, three-family house in very bad condition in a hard core slum in the Bronx.

Parcel #153009. The non-resident owner is a dentist. He owns three buildings next to each other, all in similar condition. The tenants, all Negro, are all on welfare. He complained bitterly of failures to pay rent, claiming that nearly 50 percent of the normal rent roll is uncollectable. However, he pointed out that he continues tenancy despite non-payment of rent for fear of vandalism. "If you empty an apartment in this area, you'll end up with a ruined building." It should be noted that this particular building, given miximum legal rents even if collectable, would still have a negative contribution to debt, depreciation, and profit because of very high tax payments as well as substantial costs of repairs and maintenance.

There is obviously some variation in the response of welfare offices to this problem. One very professional, hard-boiled manager of a six-story, walk-up, 20-family, Old Law building in the Williamsburg area of Brooklyn, gave this summary of his operational approach: "It is our policy to issue dispossess orders if a tenant doesn't pay his rent within a month after the due date. We don't always carry them out, but the tenant can show the order to the Welfare Department and get money to pay the rent. It's a pretty good method to enforce rent payments."

The agent usually issues 20 dispossess orders per year in this 20-family house and carries out about two or three of them. The cost per unit is running about $150 in legal and moving expenditure plus two or three months of lost rent. Losses in rent collections have run between five and ten percent per year on a rent roll of $600 per month.

Despite this punitive policy, the building is currently in tax foreclosure proceedings, having been abandoned by the owner because of tenant destructiveness. Whether a less

punitive approach might have yielded better results can be left to the reader's judgment.

Significantly, owners who accept partial payments of rent or collect weekly, frequently had welfare tenantry.

Welfare Tenancy and Rent Levels

One of the questions that opponents of rent control have raised is whether it has artificially stimulated an influx of poor from around the country into New York. Obviously, the causes of the great internal migration within the United States and Puerto Rico are far more complex than this study can encompass. There are simply very limited accommodations, other than rent controlled ones, which are within the budgets of people with incomes much under $8,000 in New York City. Housing availability, however, is merely one among several factors in the migration. The question remains of whether higher rents would have discouraged the migration of low income individuals or merely caused more overcrowding and deterioration of housing for the poor. (See Exhibit 11 for the type of housing accommodation, by control status of people who have migrated to New York City.)

Certainly, however, rent control laws have had effects, some unanticipated, on "welfare" structures, as indicated by the utilization of the rent change mechanisms.

Exhibit 11, Welfare.

(See opposite ☞)

Exhibit 11 - Welfare

PREVIOUS ADDRESS OF HEAD OF HOUSEHOLD IN CONTROLLED vs. TOTAL RENTER HOUSING STOCK, NEW YORK CITY, 1968

	Same Structure	Other Structure Same Borough	New York City Other Borough	Connecticut, N.J., N.Y.C.	Elsewhere
Rent Controlled Units	4.8%	76.6%	11.6%	2.1%	4.8%
Total Rental Units	3.9%	75.1%	13.0%	2.9%	5.1%

Source: New York City Housing and Vacancy Survey, 1968, Series III, Table P 6.

Means of Securing Rent Increments as a Function of Degree of Welfare Tenantry

Analysis of the rent control records gives considerable insight on landlord inputs into "welfare" structures. It is clear that these have been small, while the lease increase provisions of the rent control law have substantially benefitted high welfare structures.

The degree of lease increase secured from 1963 to 1967 is substantially in accordance with the degree of welfare tenantry (Exhibit 12). The mean increase for those buildings which have no, or just a few, welfare tenants as a function of lease change was $3.25 a month, per apartment. In the buildings which had 10 to 20 percent welfare, the increment was $4.12. In the structures with 20 percent or more welfare tenantry, there is a substantial upward shift in range. For the 20-50 percent welfare tenanted structures the mean increase was $4.77, while for the over 50 percent welfare tenantry the lease increase from 1963 to 1967 was $5.89. The interquartile ranges substantially carry out the analysis and are confirmed by observation of the median data.

A completely opposite relationship is evident when analysis is undertaken of increments as a function of landlord hardship application. This served to increase the mean apartment results in sample structures with no welfare tenantry by 38¢ a month, while for those buildings with few welfare tenants (less than 10 percent), it was 77¢. However, in the structures with more welfare tenantry, the figure drops off very sharply. It is only 6¢ for the 10-20

Exhibit 12, Welfare.

(See opposite ☞)

Exhibit 12 - Welfare

LEASE INCREASE PER APARTMENT PER MONTH BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1967

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Degree of Welfare Tenantry	All Structures	LEASE INCREASE PER APARTMENT PER MONTH — PERCENTILES 10	20	30	40	50	60	70	80	90	Interquartile Range (25%-75%)	Mean
Total	529											
None	259	$ .00	$ .00	$ .42	$2.25	$2.79	$3.38	$4.33	$5.50	$7.14	$ .00 - $5.00	$3.25
A Few (Less than 10%)	44	.00	.83	2.28	2.70	3.29	3.73	4.30	5.00	6.51	.84 - 4.44	3.25
10 - 20%	40	.00	1.59	2.61	2.81	4.00	4.39	5.53	7.16	7.68	2.39 - 5.79	4.12
20 Plus to 50%	88	.85	1.50	2.92	3.59	4.50	5.83	6.00	6.75	8.18	2.00 - 6.53	4.77
Over 50%	38	.75	2.00	3.58	4.59	5.33	6.00	6.16	8.13	10.88	3.33 - 7.14	5.89
Some - No Breakdown	41	1.00	1.50	2.00	2.75	3.35	4.50	6.07	6.50	8.72	1.79 - 6.25	4.22
NA/DK	19	.00	.00	.00	.00	.00	2.66	2.69	3.20	6.16	.00 - 3.14	1.92

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: New York City Office of Rent Control; Landlord Survey; Rent Controlled Structures Only.

percent welfare tenanted structures, 4¢ for the 20 to 50 percent welfare tenanted structures, while for the 36 cases with 50 percent or more welfare tenantry, there were no increments as a function of hardship in the four-year period under consideration.

The trend for additional service increments is very slight but would indicate a far greater degree of consistency of utilization of this formula and a mean value of the utilization which is inverse to the degree of occupancy by welfare recipients; i.e., *the higher the proportion of welfare tenants, the smaller the probability that the structure will have had any substantial degree of additional services.*

Generalizations become more difficult when capital improvements are considered. It should be noted, however, that the 36 cases with 50 percent or more welfare recipients occupying them have a mean dollar increment which is a negative 32¢; i.e., so many of the structures have been penalized because of failure to provide services as to cause across the board rent decreases resulting in overall decreases.

The incidence of the other formulas for increment are trivial.

Operating Results

Rents per Room as a Function of Welfare

What rents do welfare recipients pay? In Exhibit 13 some data on this intriguing point are presented. In general it is clear that welfare structures are relatively under represented at the over $23 a room per month mark. There

Exhibit 13, Welfare.

(See opposite ☞)

Exhibit ** - Welfare

MONTHLY RENTS PER ROOM BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1967

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Degree of Welfare Tenantry	All Structures	MONTHLY RENTS PER ROOM		
		Up to $12	$13 to $22	$23 and Over
Total	524	264	217	43
None	256	132	95	29
A Few (Less than 10%)	44	20	19	6
10 - 20%	38	11	24	3
20 Plus - 50%	88	44	42	2
Over 50%	38	22	15	1
Some - No Breakdown	41	21	19	2
NA/DK	19	14	4	1
P E R C E N T D I S T R I B U T I O N				
Total	100.0	50.3	41.4	8.3
None	100.0	51.5	37.0	11.5
A Few (Less than 10%	100.0	44.7	42.6	12.7
10 - 20%	100.0	29.6	62.8	7.6
20 Plus - 50%	100.0	50.0	48.2	1.9
Over 50%	100.0	59.1	39.3	1.6
Some - No Breakdown	100.0	50.0	44.9	5.1
NA/DK	100.0	74.9	19.0	6.1
P E R C E N T D I S T R I B U T I O N				
Total	100.0	100.0	100.0	100.0
None	48.8	49.9	43.7	67.8
A Few (Less than 10%)	8.4	7.4	8.6	12.8
10 - 20%	7.3	4.3	11.1	6.7
20 Plus - 50%	16.8	16.7	19.5	3.8
Over 50%	7.2	8.4	6.8	1.4
Some - No Breakdown	7.9	7.8	8.6	4.8
NA/DK	3.7	5.5	1.7	2.7

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: New York City Office of Rent Control; Landlord Survey; * Rent Controlled Structures Only.

is surprisingly little variance, however, between the several welfare occupancy categories in the up to $12 and $13 to $22 categories.

The conclusions based upon per room rents, however, are substantially altered when we analyze the same data along the lines of rents per square foot. Here the representation of welfare recipients is relatively high in the top rent level. (See Exhibit 14) Rents per apartment by degree of welfare tenancy are indicated in Exhibit 15. As is evident, there is little variation between the categories. The average maximum controlled apartment rents in structures housing welfare tenants are quite comparable to the apartment rents in non-welfare structures.

Welfare rents within the categories shown, of payments per apartment and per room, are not strikingly distinct. In terms of value received, however, there is evidence that this is not the case. The age and maintenance rating of structures indicate less value per dollar spent than is the case in non-welfare tenanted structures.

Welfare and Profitability

How profitable is the operation of buildings with welfare tenantry? In general, *it is clear that in highly welfare tenanted structures, the level of contribution to debt, depreciation and profit is relatively low.* The mean contribution to debt, depreciation and profit of buildings with no welfare tenantry, is 21.3 percent. For those buildings with a few

Exhibit 14, Welfare.

(See opposite ☞)

MONTHLY RENTS PER THOUSAND SQUARE FEET BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1968

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Exhibit 14 - Welfare

Degree of Welfare Tenanted Apartments	All Structures	MONTHLY RENTS PER 1000 SQUARE FEET		
		Up to $69	$70 to $95	$96 & Over
Total	391	173	133	75
None	181	87	61	33
A Few (Less than 10%)	36	18	11	8
10 - 20%	29	8	13	8
20 Plus - 50%	60	26	23	12
Over 50%	29	13	12	4
Some - No Breakdown	32	12	12	9
NA/DK	13	10	2	1
	P E R C E N T D I S T R I B U T I O N			
Total	100.0	100.0	100.0	100.0
None	47.6	50.6	45.8	43.7
A Few (Less than 10%)	9.5	10.1	8.0	10.7
10 - 20%	7.6	4.5	10.1	10.5
20 Plus - 50%	15.8	14.7	17.1	15.8
Over 50%	7.6	7.5	8.7	5.8
Some - No Breakdown	8.5	7.0	8.6	11.7
NA/DK	3.4	5.5	1.6	1.7
	P E R C E N T D I S T R I B U T I O N			
Total	100.0	45.4	35.0	19.6
None	100.0	48.3	33.7	18.0
A Few (Less than 10%)	100.0	48.4	29.5	22.1
10 - 20%	100.0	26.8	46.2	27.0
20 Plus - 50%	100.0	42.4	38.0	19.6
Over 50%	100.0	44.9	40.1	15.0
Some - No Breakdown	100.0	37.4	35.7	27.0
NA/DK	100.0	73.8	16.5	9.7

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Real Property Assessment Department, New York City; Landlord Survey; Rent Controlled Structures Only.

MAXIMUM MONTHLY CONTROLLED RENT PER AVERAGE APARTMENT IN STRUCTURES (1967) BY DEGREE OF WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1967

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Maximum Monthly Controlled Rent Per Average Apartment in Structures (1967)

Degree of Welfare Tenantry	*All Structures*	*Percentiles*									*Interquartile Range (25%-75%)*	*Mean*
		10	*20*	*30*	*40*	*50*	*60*	*70*	*80*	*90*		
Total	*529*											
None	259	$38	$48	$53	$57	$62	$66	$71	$79	$91	$50-$75	$64.64
A Few (Less than 10%)	44	32	36	45	48	60	65	71	75	81	42- 73	57.92
10%-20%	40	32	50	53	55	62	65	70	74	77	52- 71	60.67
20% Plus to 50%	88	38	45	50	52	56	60	65	68	74	47- 66	56.20
Over 50%	38	37	45	53	57	63	66	74	76	80	47- 76	61.14
Some—No Breakdown	41	28	48	52	52	53	62	70	76	78	49- 72	56.68
NA/DK	19	33	37	43	49	57	68	71	80	83	43- 80	58.28

NOTE: Numbers may not add precisely because of rounding.

Source: New York City Office of Rent Control; Landlord Survey; Rent Controlled Structures Only.

(i.e., less than 10 percent of welfare recipients) the figure is 25.8 percent. The high contribution figure is the 29.3 percent achieved when the proportion of welfare moves up to 10 to 20 percent. But when welfare recipients make up to 20 to 50 percent of the apartments, the contribution is only 19.7 percent. *Most marked is the distribution of the buildings which have more than 50 percent welfare—over 30 percent are in the red and the mean figure is less than five percent.* (See Exhibit 16.)

This poor performance, particularly in the case of the buildings with 50 percent or more welfare tenantry, is duplicated when cash flow is analyzed as the dependent variable. By that criterion, however, the performance of the 20 to 50 percent category is inferior to the lesser welfare groups. (See Exhibit 17.) This latter pattern is evident in the exhibit on net taxable income. (See Exhibit 18.)

More insight into the area is secured by looking into the returns on welfare structures as a function of building sets.[4] If we take the Old Law 5- to 19-unit category, only

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[4] In this procedure the results of the sample structures were divided into three yield categories. The top and bottom categories each have 30 percent of the sample. The size of the samples in this analysis is obviously too small for definitive analysis. The findings, therefore, are to be viewed as suggestive rather than definitive statements.

Exhibit 16, Welfare.

(See opposite ☞)

CONTRIBUTION TO DEBT, DEPRECIATION AND PROFIT AS A PERCENTAGE OF NET RENT RECEIVED BY WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1967
(NUMBER OF STRUCTURES IS IN HUNDREDS)

CONTRIBUTION TO DEBT, DEPRECIATION AND PROFIT AS A PERCENTAGE OF NET RENT RECEIVED

Welfare Tenantry	All Structures	PERCENTILES									Interquartile Range (25%-75%)	Mean
		10	20	30	40	50	60	70	80	90		
Total	533											
None	257	- 9%	12%	21%	27%	30%	34%	37%	40%	48%	17% to 40%	21.3%
A Few (Less than 10%)	47	- 5%	11	23	26	31	33	39	44	47	14 to 41	25.8
10 - 20%	41	6	22	26	29	31	36	37	40	47	23 to 40	29.3
20 - 50%	90	-16	10	20	23	27	30	32	37	42	13 to 35	19.7
Over 50%	39	-27	-10	- 2	5	7	14	19	27	37	- 3 to 20	4.3
Some - No Breakdown	41	2	7	15	16	22	26	30	34	38	12 to 32	20.9
NA/DK	18	- 1	4	15	25	31	35	51	54	55	4 to 54	29.5

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey: Operational Analysis; Rent Controlled Structures Only.

Exhibit 17, Welfare.

(See opposite ☞)

Exhibit 17 - Welfare

NET CASH FLOW AS A PERCENTAGE OF NET RENT RECEIVED BY WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1967
(NUMBER OF STRUCTURES IS IN HUNDREDS)

Welfare Tenantry	All Structures	NET CASH FLOW AS A PERCENTAGE OF NET RENT RECEIVED — PERCENTILES 10	20	30	40	50	60	70	80	90	Interquartile Range (25%-75%)	Mean
Total	533											
None	257	-45%	-12%	1%	7%	11%	17%	24%	31%	37%	- 6% to 28%	- 0.2%
A Few (Less than 10%)	47	-22	- 5	- 2	1	9	16	20	27	31	- 4 to 24	8.6
10 - 20%	41	-19	- 6	6	10	13	22	25	29	36	5 to 26	12.2
20 - 50%	90	-27	-18	- 3	4	9	16	22	26	31	-14 to 24	- 0.5
Over 50%	39	-120	-33	-22	-11	- 2	3	8	10	29	-25 to 10	-19.0
Some - No Breakdown	41	-21	- 5	2	6	12	16	18	26	36	- 5 to 20	9.3
NA/R	18	-14	- 1	4	4	11	19	32	51	54	4 to 51	19.9

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey: Operating Analysis; Rent Controlled Structures Only.

Exhibit 18, Welfare.

(See opposite ☞)

Exhibit 18 - Welfare

NET TAXABLE INCOME AS A PERCENTAGE OF NET RENT RECEIVED BY WELFARE TENANTRY (WEIGHTED NUMBER OF STRUCTURES) NEW YORK CITY, 1967

(NUMBER OF STRUCTURES IS IN HUNDREDS)

Welfare Tenantry	All Structures	NET TAXABLE INCOME AS A PERCENTAGE OF NET RENT RECEIVED — PERCENTILES									Interquartile Range (25%-75%)	Mean
		10	20	30	40	50	60	70	80	90		
Total	533											
None	257	-38%	-12%	- 3%	3%	8%	15%	21%	28%	34%	- 9% to 23%	- 1.9%
A Few (Less than 10%)	47	-18	-10	- 5	1	3	8	13	16	25	- 6 to 14	2.5
10 - 20%	41	-17	- 7	- 1	4	9	15	20	23	27	- 2 to 22	7.5
21 - 50%	90	-39	-14	- 2	4	7	11	16	20	28	- 7 to 17	- 1.9
Over 50%	39	-41	-27	-20	-16	-12	- 2	2	11	17	-27 to 9	-14.8
Some - No Breakdown	41	-17	- 7	- 3	- 1	2	5	10	16	22	- 6 to 14	1.8
NA/DK	18	-18	-13	- 6	- 1	1	13	32	47	51	- 6 to 47	12.5

NOTE: NUMBERS MAY NOT ADD PRECISELY BECAUSE OF ROUNDING.

Source: Landlord Survey: Operational Analysis; Rent Controlled Structures Only.

two of the 19 buildings with 20 percent and more welfare tenants are in the top category with seven in the poorest level, as measured by contribution to debt, depreciation and profit. The equivalent figures are three out of 14 for the Old Law 20-unit and over structures with five in the poorest category.

In the New Law facilities, 18 buildings in the 5- and 19-unit sets have 20 percent or more welfare occupancy; three are in the best category and nine are in the poorest. In the intermediate size New Laws, 31 structures have 20 percent or more welfare tenants; nine of these structures are in the best category, 11 are in the poorest.

In the 50-unit and over size category of New Law structures, there are 11 buildings that have 20 percent or more welfare tenantry, only three of which are in the top category, and three are in the bottom category of performance. The number of welfare tenanted buildings in the Post 1929 structure sample using the same cutoff as above is too small to allow generalizations. In the three- and four-unit parcels, however, there are 14 structures with 20 percent or more welfare tenants; of these, four are top performers and three are bottom performers.

Analysis of cash flow would indicate a somewhat similar pattern, with some minor exceptions in large Old Law structures and in the intermediate New Laws, where the proportion in the top performance category is higher than in the low performance group. This again is a tribute, unfortunately, not to the amount of funds available as much as it is the lack of financing availability typical of such structures. The data on net taxable income would bear out these findings.

The significance of this finding is substantial. To the degree that welfare tenants generally are poorly housed, there is some question whether disregarding the debt, de-